# The Solicitors' Journal

VOL. 91 — Saturday, May 31, 1947 — No. 20

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# CURRENT TOPICS

### Sir John Fischer Williams, K.C.

ONE of our greatest living authorities on international law, Sir JOHN FISCHER WILLIAMS, K.C., passed away on 17th May at the age of seventy-seven. By profession a Chancery barrister, he attained international fame as an expert in a subject which he made his own after the 1914–18 war. His academic attainments were the highest, both at Harrow and at New College, Oxford, where he not only obtained firsts in Honours Moderations and Literae Humaniores, but also won the Arnold Essay Prize and became a Fellow. Lincoln's Inn called him to the Bar in 1894. From 1918 to 1920 he was an assistant legal adviser at the Home Office, and from 1920 to 1930 he was the British legal representative on the Reparations Commission. He took silk in 1921. The Tithe Act, 1936, was the result of the labours of a Royal Commission over which he presided, and from 1936 onwards he was British member of the Permanent Court of Arbitration at the Hague. His written works included many of permanent value, such as "Chapters on Current International Law," "Some Aspects of the Covenant of the League of Nations," "International Change and Peace," and "Aspects of Modern International Law." In 1917 he was made a C.B.E. and in 1923 he was knighted.

### Rights of the Subject

SOME hard knocks were given and taken when the second reading of the Preservation of the Rights of the Subject Bill was moved and carried (contents, 37; not-contents, 19) in the Lords on 15th May. The MARQUESS OF READING, in his wittiest mood, described the Donoughmore report of 1932 as having, "like so many of its fellows, for a moment fluttered the dovecots and thenceforward cluttered the pigeon-holes of Whitehall." There had been no deliberate attempt to overthrow our liberties. "The process," his lordship said, "has been gradual, stealthy, haphazard, almost inadvertent, but unfortunately both insidious and menacing in its cumulative effect." Notable speeches were also made by LORD RUSHCLIFFE, LORD DUKESTON, VISCOUNT SIMON, VISCOUNT SAMUEL, LORD LAYTON and LORD LUCAS. The Lord Chancellor hit out vigorously at the Bill, which he called an "electoral manifesto," "ill-considered, ill-digested and ill-drafted," and "thirteen clauses which deal with wholly different topics, and ever since the Walrus and the Carpenter walked together on the sands there have not been more things talked about in one short period." He said that the problem how to get a true synthesis between a planned economy on the one hand and the liberty of the individual on the other, would not be solved by slogans, but only by hard work and getting down to it. On the publication of reasons by Government inspectors who held inquiries, he denied that this was recommended by the Donoughmore Committee, and he also denied that the proposals in the Bill concerning delegated legislation were those recommended by that committee. He further stated that if the clause in the Bill dealing with searches was passed it would form a charter for black marketeers, as by the time the information had been laid and the warrant obtained, the goods sought would be gone.

### Stipendiaries and the Lord Chancellor's Department

FROM 1915 to 1944 LORD SCHUSTER was Permanent Secretary to the Lord Chancellor and Clerk to the Crown in Chancery, a fact which indicates the importance of his evidence before the Royal Commission on Justices of the Peace, on 7th March, which has just been published by H.M. Stationery Office. In the most interesting part of his evidence he said that the range of age for the appointment of professional stipendiaries was very small; they ought not to be appointed under forty-five, or, normally, much over fifty-five. He was not inclined to think that the Bar Council's suggestion of "perambulating stipendiaries" involving fifteen in number at first, and ultimately fifty, to assist lay justices, was a very useful suggestion. He placed his faith in the common sense of the person in the area and went on to say: "There is no substantial ground for holding that the Metropolitan magistrates and the stipendiary magistrates discharge their duties in a manner conspicuously more efficient than lay magistrates." He admitted that things were possibly done a little more quickly and in a more practised manner in the court of a stipendiary partly because if only one man was sitting things went through with more regularity. Lord Schuster said, however, that as to results, it was a very striking fact that proportionately there were far more appeals from metropolitan magistrates than from lay magistrates, and proportionately far more appeals were successful. He did not lay too much stress on that, however, as a great many other elements entered into the result. Lord Schuster also suggested that stipendiaries, metropolitan magistrates and recorders should be appointed by the Lord Chancellor and all prosecuting functions should be under the Home Office, so as to separate the executive and the judicial functions as far as possible.

### Charitable Trusts for the Aged

THE Nuffield Foundation deserves everyone's thanks, and the particular gratitude of solicitors, for the production by their survey committee, under the chairmanship of Mr. B. SEEBOHM ROWNTREE, of a report on Charitable Trusts in Great Britain for the accommodation, care and comfort of old people. LORD HENDERSON made it clear in a Lords debate on 1st May that the Government has the recommendations of the report under consideration. Of trade and professional benevolent funds, excluding those providing annuities for members on an insurance basis, it is interesting to note in the report that replies were received from 119, and 78 of them were established between 1816 and 1895, the years which saw the reform of the Poor Law and the passing of the Factory Acts. The estimated value of land and buildings used by these funds for the accommodation of old people is £1,044,600, and the estimated capital value of their endowments is £11,967,200. The charities included in the survey expend £2,018,392 on providing pensions and other benefits for 65,474 people. The report contains a number of recommendations. In a significant sentence the authors state as to trade and professional benevolent funds: "In changing social conditions, and with the advent of social insurance on a comprehensive scale, it is probable that the call upon them for pensions and annuities will decrease and that their future work will tend to be concentrated on helping those members who are in need of financial assistance through illness or infirmity and are under the age when they will receive State assistance through old-age pensions." Throughout the report breathes the spirit of charity in its original and best sense, that of loving-kindness, especially in its insistence that old people do not want charity but do want suitable accommodation at a rent they can afford. Solicitors who have to advise benevolent testators cannot do better than to study this excellent report (The Nuffield Foundation, London, price 2s. 6d.).

### Control of Borrowing

NOT many tears will be shed at the revocation, almost in its entirety, of reg. 6 of the Defence (Finance) Regulations, 1939, under which capital issues and offers for sale have hitherto been controlled, by Order in Council dated 21st May, 1947 (S.R. & O., 1947, No. 944). After 16th June, 1947, it will survive only in relation to certain offers for sale, as to which a new Capital Issues Exemptions Order, 1947 (S.R. & O., 1947, No. 946), has been issued, and in relation to the Isle of Man. On the other hand, not many flags will be flown to greet the only slightly less restrictive provisions of the Control of Borrowing Order, 1947 (S.R. & O., 1947, No. 945), issued in its place under the Borrowing (Control and Guarantees) Act, 1946. The chief practical relief will arise from its being no longer necessary, from 16th June, for a new company to await Treasury permission before the £50,000 exemption limit applies. The power of the Treasury to direct that the exemption shall not apply remains in force and consent will still be required, whatever the amount, if the issue is a capitalisation of profits or reserves.

### Status of Housewives

ACCORDING to a recent report in *The Times*, the Attorney-General is to consult the Lord Chancellor on the question of introducing legislation to establish a higher economic status for British housewives. This, it appears, is the outcome of a deputation to the Attorney-General led by Miss JUANITA FRANCES, the founder of the Married Women's Association, with the support of the Marriage Guidance Council. Few lawyers would seek to defend on moral grounds the rule that a wife's legitimate savings out of her housekeeping moneys belong to her husband. The irritation and sense of grievance which many wives feel at the operation of this rule, which legally robs them of the reward of their thrift and good management, must undermine the foundations of many marriages. Their bitterness may be gauged by the fact that in many instances the question as to what is the product of household saving and what is the product of separate earnings is the substance of the property disputes under the Married Women's Property Act, which so often ensue on the breaking up of a marriage. It is possible also that the mere existence of this injustice is sufficient to prevent a reconciliation between a wife who feels that a court order has taken from her her proper due, and a husband who has succeeded in obtaining such an order. The Attorney-General also expressed understanding of the hardships which might arise where a husband failed to provide his family with proper maintenance while still living with them. It may well be thought that the remedy by summons in the magistrates' courts on the ground of wilful neglect to provide reasonable maintenance needs amplification, and that some statutory presumption should be enacted to indicate to magistrates what they may regard as wilful neglect, in the absence of evidence to the contrary. Possible reforms in this direction will have to be explored, and the appointment of a committee of inquiry with wide terms of reference seems to be the next step.

### War Damage: Sewerage and Water Undertakings

MINISTRY of Health circular 85/47 to sewage and water undertakers announces that it is now considered desirable that the criterion to be applied in determining the kind of property which should be brought within the scope of the Public Utility Scheme should be on a different basis from that set out in s. 70 of the War Damage Act, 1943. The Treasury now propose that the determining factor in deciding whether a war damage claim should be dealt with under the Public Utility Scheme should be whether, *at the time of damage*, the sole or lowest proprietary interest in the property was owned by a public utility undertaking; if so, the claim should be made under that scheme. One proprietary interest is said to be lower than a second proprietary interest in the same property if the former carries the right of immediate possession against the second interest. The necessary authority for this change will be sought in a Bill which is to be introduced into Parliament to give effect to the settlement of the war damage claims of public utility undertakings and of the contributions to be made by such undertakings. Subject to the sole or lowest proprietary interest being held by the undertaking concerned at the time of damage, it follows that claims in respect of the under-mentioned classes of tenancies will fall to be dealt with under the Public Utility Scheme: (*a*) when an undertaking holds the freehold interest and there is no other proprietary interest; (*b*) when an undertaking holds a long tenancy and the property is not sub-let to any other body or person on a long tenancy; (*c*) when an undertaking has granted a short tenancy to any other body or person. As regards (*c*), cost of works payments have in some cases been made by the War Damage Commission under the War Damage Act, 1943, in respect of work for which the tenant has incurred the liability. Such payments will not be taken into account in determining the total amount to be paid for war damage to a group; nor will they be taken into account in assessing the aggregate contribution to be made by that group. Any supplementary claims by undertakings in respect of property included in the three categories should be submitted to the Department not later than 31st July, 1947. If a claim already made includes items in respect of war damage to property held by an undertaking on a short tenancy, full particulars should at once be sent to the Department, in order that an adjustment may be made.

### Requisitioning and Housing

THE Select Committee on Estimates, which published its report (H.M. Stationery Office, 3s. 6d.) on 17th May, estimates that the cost of requisitioning this year to the Exchequer will amount to over £20,000,000. The committee therefore recommends the speediest possible release of all requisitioned property which the nation does not need to retain. At the end of the war, the report states, the Government held 96,566 non-industrial premises, 220,000,000 square feet of industrial and storage premises, and 12,000,000 acres of land.

By 31st December, 1946, these figures had been reduced to 16,784 non-industrial premises, 30,000,000 square feet of industrial and storage premises and 2,500,000 acres of land. None of this was held by the Government before the war. The Office of Works before the war held about 24,000,000 square feet of buildings for office accommodation, but this figure rose to 44,000,000 by the end of 1946, the reason being the increase of non-industrial civil servants from 374,000 in 1939 to 722,000 at the end of 1946. The problem of derequisitioning non-industrial premises, according to the report, is linked with the problem of the growth of the Civil Service. By the end of 1946 the Service departments had derequisitioned 94 per cent. of their holdings of residential and non-industrial premises, but the Civil departments had only derequisitioned 52 per cent., excluding requisitioning by the Ministry of Health for housing purposes. The Service departments held 1,133 small houses and flats, 20 schools, 117 hotels and 3,134 other premises. The Civil departments held 96,003 small houses and flats, 105 schools, 316 hotels and 9,889 other premises. These figures included premises held by the Ministry of Health. The conclusion of the committee is that while much has already been done, it is necessary that housing should be given priority over all other purposes and that houses and flats still used as Government offices should be released.

### Rent Tribunal Cases

UP to 31st March, 1947, according to figures issued by the Ministry of Health, 10,000 cases have now been referred to rent tribunals in England and Wales. Rents were reduced in 4,458 out of 6,008 cases decided, approved in 567 cases, and increased in 49. Reductions have been made in 74 per cent. of cases decided so far. The mean percentage rent reduction was 31 per cent. Two tribunals, Stepney and Paddington, have each had over 1,000 cases referred to them. Stepney's figure was 1,364. Among other tribunals which have been exceptionally busy are Hammersmith (638), St. Pancras (473), Westminster (412), Ealing (220), Harrow (242), Kingston-on-Thames (221), Leeds (205), Portsmouth (139), and Sheffield (112). Paddington has made by far the greatest number of rent reductions (585), the next being Hammersmith (320), St. Pancras (238), Westminster (221), and Stepney (194). Paddington also leads in the number of rents increased (17), the next being Wimbledon (8), Hammersmith (5), Croydon (3), St. Pancras (2), Barking, Crayford, Islington, Lewisham and Stepney (1 each). None of the remaining tribunals has increased any rents.

### Recent Decisions

In *C.* v. *C.*, on 20th May (*The Times*, 21st May), a Divisional Court (LORD MERRIMAN, P., and JONES, J.) held that a magistrates' court had jurisdiction to make a custody order with regard to a child born before the date of the father's marriage to the mother and subsequently legitimated as a result of the father's marriage to the mother, in accordance with the Legitimacy Act, 1926, notwithstanding that no petition had been presented on behalf of the child under s. 2 of the 1926 Act, and that no declaration had been made under s. 188 of the Supreme Court of Judicature (Consolidation) Act, 1925, that the child was legitimate. Section 193 of the Judicature Act, 1925, gave the court jurisdiction, and a "legitimated" child was a child of the marriage within the meaning of the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1925.

In *Automobile Engineering* (*Educational*) *Trust, Ltd.* v. *R.*, on 21st May (*The Times*, 22nd May), LYNSKEY, J., held on a petition of right that a contract between a motor training college and the Director of Naval Contracts for the training of motor mechanics, to last for the duration of hostilities, was broken by reason of the Director's failure and refusal after January, 1944, to draft further trainees, and that it was valid and enforceable and there must be an inquiry as to damages.

In *J.* v. *J.*, on 23rd May (*The Times*, 24th May), a Divisional Court (SOMERVELL and COHEN, L.JJ., and LYNSKEY, J.) held, reversing a decision of JONES, J., that where a husband insisted before marriage on submitting himself to an operation rendering himself incapable of procreation—and the wife only reluctantly consented, on his promise not to submit to the operation until after the marriage, and she heard for the first time six weeks before the wedding—the respondent husband to a petition by the wife for a decree of nullity of marriage, had rendered himself incapable of effecting consummation of the marriage, and that neither the petitioner's knowledge nor the lapse of time was, in the circumstances, a bar to the decree being granted, as the petitioner did not discover her legal rights until 1945, when she left her husband and commenced the nullity proceedings.

# COMMON EMPLOYMENT: SOME RECENT CASES

COMMENTING on the case of *Radcliffe* v. *Ribble Motor Services, Ltd.* [1939] A.C. 215; 1 All E.R. 637, the learned editors of the All England Law Reports said "the doctrine [of common employment] is quite inappropriate to modern conditions . . . No doubt, after the expression of their lordships' opinion herein, it will not be long before the doctrine is made the subject of legislation." A sad commentary on the rate of progress of the programme of law reform, dislocated as it has been by the war, is furnished by the fact that the prophecy has had to be repeated in an editorial note in the same series of reports over seven years later: *Lancaster* v. *L.P.T.B.* [1946] 2 All E.R. 612. So far from legislation having been introduced, the doctrine has several times in the past year come up for consideration by the courts, and in one case by the House of Lords. All these cases are the result of traffic accidents.

The doctrine continues to find little favour with the judiciary, but at this stage nothing short of legislation can abrogate it. So much is clear from the words of Lord Wright in the *Radcliffe* case [1939] 1 All E.R., at pp. 655-6. Observing that the common law is indeed flexible and progressive, his lordship yet holds that this particular part of it is so well settled by established authority, and recognised in partly remedial legislation, that the House must decline counsel's invitation to depart from the rule on the ground that it is based on industrial and social conditions which have changed.

The exact scope of the doctrine as approved by the House of Lords before the development of the modern trend of judicial opinion is, however, fortunately limited in various ways and not always clearly defined. Accordingly, in recent times the House and the courts alike have not been slow to escape from its confines through any loophole that has presented itself. For example, where one employee is injured by the negligence of another to whom the employer has delegated a duty which binds the employer, it has been held that the employer cannot avail himself of the defence of common employment (*Wilsons and Clyde Coal Co.* v. *English* [1938] A.C. 57).

There are exceptions to the doctrine then, but it is important to notice that the doctrine itself is but a qualification of the general maxim of the common law *respondeat superior*. A master is in the ordinary course liable in tort for the wrongful acts of his servant. The qualification naturally does not apply unless the person who suffers by reason of the wrongful act, and who would therefore under the general maxim be entitled to recover against the master, is himself a servant of the same master. But there must be something more. The result of the earlier authorities is shown by the speeches in *Radcliffe's* case to be that not only must there be a common master, but also a common task. The two servants must be engaged on common work. It is the question whether or not this latter condition is fulfilled in the particular case that has recently set the scene of the discussion.

Historically, the basis of this exception to a general rule of the law of torts lies in contract, for Blackburn, J., in *Morgan* v. *Vale of Neath Railway* (1864), 5 B. & S. 570, at p. 578, says, " that principle I take to be that a servant who engages for the performance of services for compensation does, *as an implied part of the contract*, take upon himself, as between himself and his master, the natural risks and perils incident to the performance of such services." Notice that we may put in another way the requirement that the employment must be in truth common, if we say that the risk of injury as a result of the commission of a tort by the fellow-servant must be a peril incident to the performance of the plaintiff's services. The idea of a bargain between master and servant which leaves with the latter any freedom at all as to the implication or exclusion of such a term is no doubt in modern industrial conditions a highly artificial conception, but nevertheless the law will normally read into the bargain a stipulation negativing the master's liability. Here again, though, the courts have recognised that the implication is a fiction, and where the proved facts do not admit of the fiction being fitted in, they have generally been astute to find an exception to the doctrine. Thus, in *Holdman* v. *Hamlyn* [1943] K.B. 664, the Court of Appeal refused to imply the term into the gratuitous engagement of a boy of the age of ten years in such a manner as to exclude the master's liability when the boy was injured by the negligence of a fellow servant.

The actual decision in *Radcliffe* v. *Ribble Motor Services, Ltd., supra*, was to the effect that where two coach drivers employed by the same company were proceeding independently by different routes and at a point where those routes happened to coincide one driver was killed by the negligence of the other, the two drivers were not engaged in a common task so as to make the risk of injury by the negligence of one a peril incident to the employment of the other, so that the defence of common employment was not applicable. There was a common employer, but not common employment. The speeches in the House of Lords have been repeatedly referred to in subsequent cases and deal exhaustively with the whole subject. Lord Macmillan's has the neatness of exposition which we have come to expect of the Scottish lords of appeal, Lord Atkin's approaches the matter historically, while Lord Wright's is perhaps the most valuable for its detail.

To similar effect was the decision of the Court of Appeal in *Metcalfe* v. *L.P.T.B.* [1939] 2 All E.R. 542, where a bus conductor was injured by the negligence of a tram driver, both being employed by the defendants.

Sometimes the court has taken what has appeared at first to be a common task and, by analysing it into two distinct parts, each of which is performed by one of the servants concerned, has succeeded in avoiding the application of the doctrine of common employment. Such a case was *Pollock* v. *Chas. Burt* [1941] 1 K.B. 121, in which the Court of Appeal held that a branch manager engaged in calling on customers and the driver of the car which conveyed him from the address of one customer to that of another were not in common employment.

This decision was recently followed by Hilbery, J., in *Colman* v. *Isaac Croft & Sons* [1947] 1 K.B. 95. The plaintiff's husband had been killed by the admitted negligence of the driver of a lorry belonging to the defendants, by whom he was also employed. But the deceased's usual employment did not involve travelling in the lorry at all. He was a bricklayer, and, as the learned judge found, the only contractual engagement of him by the defendants was in that capacity. Occasionally, however, when there was no building work for him, and when the lorry was short of a driver's mate, the deceased had acceded to the employers' request to accompany the driver of the lorry and assist in the loading and unloading of stores. It was while he was being driven in the lorry on one of these occasions that the accident occurred.

Hilbery, J., appears to have held that as regards the special work the deceased was a volunteer. But on the authority of the Court of Exchequer in *Degg* v. *Midland Railway Co.* (1857), 1 H. & N. 773, the mere absence of a contract of employment was not a sufficient ground for holding that the risk was not accepted. Nevertheless, the learned judge thought that any risks voluntarily undertaken by Colman were restricted to those incident to the common task of loading and unloading goods, and did not extend to the risk of the driver's negligence while the deceased was being driven in the lorry.

On the other hand, Henn Collins, J., in *Lancaster* v. *L.P.T.B., supra*, found himself unable to exclude the defence of common employment when a linesman on a tower wagon engaged in the repair of the overhead gear on a trolley-bus route was injured through the negligence of a trolley-bus driver. Giving judgment for the defendants, his lordship said: " I think this has got to be judged, not on the question which arose in some of the other cases, whether it was a mere fortuitous event that the vehicles were in the same place at the same time, but whether the callings of the bus driver and the linesman brought them to that juxtaposition."

The latest case, a Scottish appeal in the House of Lords (*Graham (or Miller)* v. *Glasgow Corporation* [1947] 1 All E.R. 1), may be taken as emphasising that a decision on the question of " common task " must be strictly confined to its own facts. For the circumstances were to this extent similar to those in *Radcliffe's* and *Metcalfe's* cases that in all three the event giving rise to the claim was an accident on the open highway, where there were the normal risks of a collision with vehicles not necessarily driven by fellow servants of the claimant. This time the vehicles which did actually collide were two tramcars. The pursuer was the conductress of one and the driver of the other was her negligent fellow-employee of the defenders. She appealed against the order of the Second Division of the Court of Session reversing the decision of the Lord Ordinary in her favour. The law on this matter has since 1858 been established as the same in Scotland as in England.

Viscount Simon, at p. 4, introduced his opinion on the facts of the case by the observation that *Radcliffe's* case did not support the broad proposition that the defence of common employment is never available when two vehicles driven by fellow-servants of the same employer collide in the high road. " If the risk of collision between them is merely the ordinary risk arising from contiguity in traffic, i.e., the risk of being run into by another vehicle, whoever is its driver, then the injured party has no special interest in the skill and caution of a driver who is his fellow-servant. The risk he runs is a mere risk of the road in the sense that he might equally well be run into by anyone else driving in his vicinity, but, if the relation between the work of the two fellow-servants is such that one of them depends for his safety from harm in a special degree on the care and skill of the other, then they are engaged in a ' common work,' and the term in the contract of employment exonerating the common employer from liability has to be implied."

The two tramcars in question were engaged in the same service and were following the same route on the same pair of rails. Moreover, the fact that two tramcars on the same line cannot avoid a threatened collision by lateral movement appeared to his lordship to distinguish the case before the House from that of a collision between two buses, or even between tram and bus. [And, it may perhaps be added respectfully, the same consideration makes this a much stronger case than *Lancaster's*.] Accordingly, the term excluding liability was to be read into the appellant's contract of employment. The other noble and learned lords agreed, and the appeal failed.

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At a meeting of the directors of the Solicitors' Benevolent Association, held on 7th May, 1947, grants amounting to £2,522 12s. were made to thirty beneficiaries. Twenty-seven new members were admitted. The annual membership fee is one guinea (minimum); life membership ten guineas. The offices are at 12, Clifford's Inn, Fleet Street, E.C.4, and the Secretary will gladly send membership forms and full particulars of the Association's work to any solicitor who is not a member.

# DIVORCE LAW AND PRACTICE

(1) *Appeal from a Judge sitting alone*

The question must frequently arise, in connection with the grant or refusal of a decree by a judge sitting without a jury, of the chances of obtaining from the Court of Appeal an order setting aside his finding on a question of fact. In view of the importance of the subject it may be helpful to refer to a recent decision in the House of Lords, *Watts* (*or Thomas*) v. *Thomas* [1947] 1 All E.R. 582, which concerned the principle which should be applied by an appellate court in such a case.

Although this case concerned a question of the construction of the Scottish Divorce Act (the Divorce (Scotland) Act, 1938), which differs in its wording from the Matrimonial Causes Act, 1937, as regards the circumstances in which an appellate court may be justified in taking a different view on facts from that of a trial judge, as was pointed out by Lord Simon in his dissenting opinion, the same principles apply in such a case to appeals in England or in Scotland. In that case a husband petitioned for a decree of divorce upon the ground of his wife's cruelty. The Lord Ordinary rejected the petition and refused a decree, but his decision was reversed on appeal by the Second Division of the Court of Session, Lord Mackay, whose opinion formed the judgment of the court, repeatedly refusing to accept the opinion of the Lord Ordinary. On appeal, however, to the House of Lords, the appeal was allowed, and the decision of the Lord Ordinary was restored. In his opinion, with which the majority of the Law Lords expressed their concurrence, Lord Thankerton stated that Lord Mackay had misconceived or disregarded the duty of an appellate court in regard to the decision of a judge, sitting without a jury, on a question of fact (when there is no misdirection), and he laid down the principles embodied in previous decisions which he stated to be as follows :—

(1) Where a question of fact has been tried by a judge, without a jury, and there is no question of misdirection of himself by the judge, an appellate court which is disposed to come to a different conclusion on the printed evidence should not do so unless it is satisfied that any advantage enjoyed by the trial judge by reason of having seen and heard the witnesses could not be sufficient to explain or justify the trial judge's conclusion.

(2) The appellate court may take the view that, without having seen or heard the witnesses, it is not in a position to come to any satisfactory conclusion on the printed evidence.

(3) The appellate court, either because the reasons given by the trial judge are not satisfactory, or because it unmistakably so appears from the evidence, may be satisfied that he has not taken proper advantage of his having seen and heard the witnesses, and the matter will then become at large for the appellate court.

He then went on to state that it was obvious that the value and importance of having seen and heard the witnesses would vary according to the class of case, and, it might be, the individual case in question, and that it would hardly be disputed that consistorial cases formed a class in which it was generally most important to see and hear the witnesses, and particularly the spouses themselves. Further, within that class, cases of alleged cruelty would afford an even stronger example of such an advantage. He referred to a passage from the opinion of Lord Shaw in *Clarke* v. *Edinburgh & District Tramways Co.* [1919] S.C. (H.L.) 35, at p. 37 : " In my opinion, the duty of an appellate court in those circumstances is for each judge to put to himself, as I now do in this case, the question : 'Am I, who sit here without those advantages, sometimes broad and sometimes subtle, which are the privilege of the judge who heard and tried the case, in a position, not having those privileges, to come to a clear conclusion that the judge who had them was plainly wrong ? If I cannot be satisfied in my own mind that the judge with those privileges was plainly wrong, then it appears to me to be my duty to defer to his judgment.' " He then stated that he was of opinion that the appeal then before him fell within the second of his propositions, since he was satisfied that he was not in a position, without enjoying the advantages of seeing and hearing the witnesses, to come to a satisfactory conclusion on the printed evidence, and he could find no justification for rejecting the views of the Lord Ordinary.

It may be noted that an illustration of a case falling within the third proposition is afforded by the decision of the Court of Appeal in *Yuill* v. *Yuill* [1945] P. 15, in which the judgment of Wallington, J., dismissing a petition by a husband upon the ground of adultery and believing the evidence of the respondent and co-respondent, was reversed. In that case Lord Greene, M.R., in allowing the appeal, said : " It can, of course, only be on the rarest occasions, and in circumstances where the appellate court is convinced by the plainest considerations, that it would be justified in finding that the trial judge had formed a wrong opinion. But when the court is so convinced it is, in my opinion, entitled and, indeed, bound to give effect to its conviction. It has never been laid down by the House of Lords that an appellate court has no power to take this course."

(2) *Submission of No Case*

It will be remembered that the important question also arose in *Yuill's* case as to the course which should be adopted in the Divorce Division when a submission is made by the respondent's counsel at the close of the case for the petitioner that there is no case for the respondent to answer. There counsel for the respondent had made a submission of no case, not, as was pointed out by Lord Greene in his judgment, in the sense that the evidence led by the petitioner was insufficient in law to support a decision in his favour, but by way of an invitation to Wallington, J., to dismiss the petition without calling on the respondent. Upon that submission, however, the learned judge did not follow the practice of calling on the respondent's counsel to elect whether to call evidence or to proceed with his submission, and the submission having failed, counsel for the petitioner contended that the respondent's counsel, by making the submission, had lost the right to call evidence, and that the judge's ruling necessarily meant that the petitioner was entitled to a decree.

In rejecting this contention, which was repeated in the Court of Appeal, Lord Greene referred to the meaning of the practice which in appropriate cases is followed in the King's Bench Division where counsel for a defendant desires to make a submission of no case, and to certain cases (which he sets out in the judgment) in which this practice has been discussed, and he stated that he would assume that it was a proper practice to follow in the Divorce Division. He then went on to lay down a qualification on the practice, saying : " It does not mean that counsel by submitting no case *ipso facto* loses his right to call evidence if his submission fails. He only loses that right if he definitely elects to call no evidence. He may make this election expressly or (as in *Laurie* v. *Raglan Building Co.* [1942] 1 K.B. 152) impliedly. The practice which has been laid down amounts to no more than a direction to the judge to put counsel who desires to make a submission of no case to his election, and to refuse to rule unless counsel elects to call no evidence. Where counsel has so elected he is, of course, bound ; but if, for any reason, be it through oversight or (as here) through a misapprehension as to the nature of counsel's argument, the judge does not put counsel to his election, and no election in fact takes place, counsel is entitled to call his evidence just as if he had never made the submission."

In *Goodwin* v. *Goodwin* [1947] W.N. 28, a similar position arose in the Divorce Divisional Court in an appeal from justices by a husband against a finding against him at the hearing of a summons by his wife for desertion. It appeared that at the conclusion of the wife's evidence a submission was made on behalf of the husband that there was no case for him to answer. The justices, after discussion among themselves in court, announced that they had made up their minds in favour of the wife, and upon the solicitor for the husband protesting, the chairman of the justices said : " Do you wish to call him ? We thought you had finished." The

solicitor declined, saying that under the circumstances there seemed no point in calling the husband. In his judgment, allowing the appeal and remitting the case for a re-hearing by a fresh panel of justices, the President referred to the extension by the Court of Appeal in *Yuill's* case of the above principle to the Divorce Division, and he stated that in the case there before him the justices had apparently made up their minds before the duty of election was put to the defendant husband; had it been put earlier a different situation might have arisen, because in that case the solicitor for the husband would have realised that it was her duty to decide whether or not to call the husband and dispute the case or to rest upon a submission which was of doubtful validity. In his judgment, Hodson, J., expressed himself as satisfied that from the circumstances set out in the affidavit of the clerk to the justices, coupled with the absence of evidence from the husband himself, there was no foundation for the finding of the justices that the husband had no intention of resuming married life with his wife.

This would appear to be the first case in which this principle has been sought to be applied in a hearing before justices, and in view of the fact that the procedure in this case was unsatisfactory on other grounds, it will be interesting to see what course will be taken and whether the decision in *Yuill's* case will be applied in every case before justices should the point be raised in a future case in which no other ground of appeal is taken (see 111, *Justice of the Peace and Local Government Review* 251, where this question is more fully developed).

(3) *Decisions before Magistrates*

Reference may be made to an interesting comparison between the position of a decision of magistrates and that of a pensions appeal tribunal which was made recently by Denning, J. in two appeals under the Pensions Appeal Tribunals Act, 1943: *Brain* and *Wilkes* v. *Minister of Pensions* (1947), *The Times*, 6th May. In remitting the cases before him, where the tribunal had decided against the claimants by a majority, for a fresh hearing before another tribunal, he contrasted the acceptance of a majority vote as a valid basis of decision in the case of trials by magistrates where there was a right of appeal, with the necessity of a unanimous decision before a claim to a pension could be rejected in the case of a hearing before a tribunal where the claimant had no right of appeal on the facts, holding that in the case of a disagreement the claimant should have an opportunity of going before another tribunal. With regard to a trial by jury, however, the learned judge pointed out that ever since 1367 the law had required the decision of a jury to be unanimous, and if it was not so the matter was re-heard by a different tribunal.

# COMPANY LAW AND PRACTICE

## AMENDMENTS TO THE COMPANIES BILL—III

It will be recalled that the report of the Cohen Committee recommended that the existing privilege enjoyed by private companies in being exempt from the obligation to include a copy of their balance sheet in the annual return should be abolished, except in the case of small private companies the business of which is, in substance, a family business or a partnership and which are not subsidiaries of public companies. The new Bill has adopted this recommendation, but the definition of the conditions which a private company must satisfy before it will in future continue to enjoy exemption from the obligation of filing accounts has proved to be a complicated matter, and these conditions (originally contained in cl. 43 of the first draft of the Bill) have now been so expanded as to require a separate schedule. There is, however, no change in the primary conditions which have to be satisfied before a private company can be treated as what is now called "an exempt private company," these conditions being as follows (cl. 52 and Sched. III):—

(1) that no body corporate is the holder of any of the company's shares or debentures;

(2) that no person other than the holder has any interest in any of the company's shares or debentures;

(3) that the number of debenture-holders does not exceed fifty;

(4) that no body corporate is a director of the company, and neither the company nor any of its directors is party to any arrangement whereby the policy of the company is capable of being determined by persons other than the directors, members and debenture-holders.

Schedule III deals with the first two conditions and with the exceptions which are permitted in regard thereto. The provisions of the original draft Bill are retained, allowing the following exceptions: (*a*) In regard to the first condition, the holding of a private company's shares or debentures by a banking or finance company will not involve a loss of "exemption," if the shares or debentures were acquired by the banking or finance company in the ordinary course of its business and by arrangement with the private company or its promoters: but this exception will not apply if such banking or finance company controls one-fifth or more of the total voting power at a general meeting. ("Banking or finance company" is defined in para. 6 of the Schedule.) (*b*) The second condition will not be broken by reason only that shares or debentures are held by personal representatives or by trustees of a will or family settlement disposing of the shares or debentures, so long as no body corporate has an immediate interest under the trusts. Nor does the fact that in such a case the personal representatives or trustees are a body corporate involve an infringement of the first condition.

The main alteration which has been made to the provisions of the original Bill is to permit as an exception to the first condition the holding of the company's shares by another company which is itself an exempt private company. This exception, however, will not apply where the total number of persons holding shares in both companies is more than fifty, not counting the companies themselves; and where shares of the second company are held by a third company, being an exempt private company, it is the total membership of the three companies which must not exceed fifty, and similarly where a fourth company, being an exempt private company, holds shares in the third company, and so on. That is to say, the individual members of any such group of companies must not in the aggregate exceed fifty: if they do, none of the companies will qualify as an exempt private company. It is to be observed that there is nothing in these provisions excluding, for the purpose of calculating the number of members, employees and ex-employees of a company, though it will be remembered that s. 26 of the 1929 Act does not require members who are employees or ex-employees to be included for the purpose of the restriction of membership of a private company to fifty: and a rather illogical result may arise. A private company, none of whose shares is held by another company, may have two shareholders and one hundred employee shareholders and still qualify to be an exempt private company; but if some of its shares are held by another company which is an exempt private company, and has perhaps only two shareholders, the first company ceases to qualify, since the aggregate number of the shareholders of both companies (there being no exclusion for this purpose of employee shareholders) is over fifty.

The Schedule contains provisions to prevent a vicious circle arising where two companies, which would otherwise qualify as exempt private companies, hold shares in each other. If some of company A's shares are held by company B, then, as we have seen, company A will not be an exempt private company unless company B is itself an exempt private company; and if some of company B's shares are held by company A, company B cannot qualify unless company A is an exempt private company; and in these circumstances you could never determine that either company is an exempt

private company. This knot is cut by the provision that, in such a case, if company B fulfils all the other requirements it can be assumed that in relation to the shares held in company B by company A, company A *is* an exempt private company.

As regards the condition that no person other than the holder shall have any interest in the shares or debentures of an exempt private company, there is, so far as I can see, no exception for the case of a shareholder in whose name shares are registered with a view simply to providing him with any necessary director's qualification; so that in the case of an exempt private company whose articles require a qualification, the directors must, with the exception of personal representatives and genuine trustees, be the beneficial owners of their qualification shares. A more fundamental difficulty about the condition requiring only the holder of a share to have any interest therein is that the continued qualification of a company to be an exempt private company is, in effect, at the mercy of an individual shareholder: although there are provisions, in effect, permitting a charge on shares in favour of a banking or finance company for money lent in the ordinary course of business, any other charge on his shares by a member would result in an interest in the shares arising in some person other than the holder, and a consequential infringement of the condition; and the company would be helpless in the matter. The company has to send in with its annual return a certificate signed by a director and the secretary that to the best of their knowledge and belief the conditions are satisfied; dealings by a shareholder with the beneficial interest in his shares would not necessarily or normally come to the knowledge of the company, and the certificate might continue to be rendered in all good faith, although the conditions might, in fact, no longer be satisfied, since some other person than the holder might have acquired an interest in the shares. It would not be a very satisfactory result that a company should in this way continue to be treated as an exempt private company although it no longer satisfied the necessary conditions; but the difficulty is, as I see it, bound to arise where you have provisions which, in effect, limit beneficial interests in shares to the registered holder and leave the company unconcerned and not equipped to inquire into those interests.

The last amendment to which I want to refer is contained in the new cl. 62, which introduces some important relaxations in the requirements of the 1929 Act as to the issue of prospectuses. First, it is provided that s. 35 of the 1929 Act shall not apply to the issue of a prospectus or form of application for shares or debentures which are in all respects uniform with shares or debentures previously issued and for the time being dealt in or quoted on a prescribed stock exchange. Secondly, where it is proposed to offer shares or debentures to the public by a prospectus and application is made to a prescribed stock exchange for a quotation, application may also be made to the stock exchange for a certificate of exemption, i.e., a certificate that, having regard to the size and other circumstances of the issue and to any limitations on the number and class of persons to whom the offer is to be made, compliance with the requirements of the Companies Act as to the particulars to be stated in a prospectus would be unduly burdensome. If such a certificate is obtained and the stock exchange requirements as to publication of particulars and information are complied with, these two exemptions are obtained: (*a*) a prospectus giving the particulars and information in the form required by the stock exchange will be deemed to comply with the statutory requirements as to the particulars to be stated in a prospectus; (*b*) s. 35 of the Companies Act will not apply to any issue, after the application for a quotation has been granted by the stock exchange, of a prospectus or form of application relating to the shares or debentures. This recognises (and the recognition will, I think, be generally welcomed) that the conditions which the stock exchange requires to be satisfied before acceding to an application for a quotation provide an adequate alternative to compliance with the statutory requirements in cases at least where the offer is being made to a small section of the public; it should considerably ease the burden and expense which compliance with the Act's prospectus requirements involves in the case of placings of shares among the clients of brokers or issuing houses, without diminishing the protection afforded by adequate disclosure of relevant information; and in particular cases the advantage of the comparative flexibility of the stock exchange conditions over the rigidity of the statutory requirements will prove of value.

# A CONVEYANCER'S DIARY

## ADMINISTRATION OF ESTATES

THE rule in *Allhusen* v. *Whittell* (1867), L.R. 4 Eq. 295, is stated in the headnote to that case as follows: "Where a testator has bequeathed legacies and given the residue to a tenant for life, with remainder over, executors, though as between themselves and the persons interested in the residue they are at liberty to have recourse to any funds they please in order to pay debts and legacies, yet will be treated by the court, in adjusting the accounts between tenant for life and remainderman, as having paid the debts and legacies not out of capital only, nor out of income only, but with such portion of the capital as, together with the income of that portion for one year, was sufficient for the purpose." This rule appears to do scrupulous justice between the parties, and is in theory applicable to every administration where the will does not expressly exclude it. In a few large cases it is, no doubt, worth the executors' while to attend to the rule, but I think that in nine cases out of ten it is ignored without any challenge. And it is well that it should be ignored, for the prospect of working out its application to the sort of debts which are payable out of the average estate, a few shillings to the newsagent and a pound or two to the grocer, is appalling. However, since there is no advantage in leaving opportunities to the cantankerous, I recommend the draftsman of every will which settles the testator's residue to exclude the rule in *Allhusen* v. *Whittell* unequivocally, and to provide in terms that all debts and legacies are to be a charge on capital (so far as it suffices) in exoneration of income, and that all income actually received after the death of the testator is to be paid to the tenant for life. (One may as well also add that income and dividends paid or declared in respect of whatever period shall belong to the person entitled to income at the date of payment, as that will exclude also the equally troublesome and annoying calculations which the Apportionment Act causes; but that is another matter.) It is really more important to exclude the rule in *Allhusen* v. *Whittell* than to exclude those in *Howe* v. *Dartmouth* (1802), 7 Ves. 137, and *Re Chesterfield's Trusts* (1883), 24 Ch. D. 643, since *Allhusen* v. *Whittell*, if it were applied whenever it is applicable, would be almost universal.

The rule in *Allhusen* v. *Whittell*, if not excluded, does not only apply to debts actually payable at the testator's death. Thus, it applies to a contractual annuity created by the testator, not only in respect of arrears accrued at his death, but in respect of instalments subsequently payable. This matter appears to have been one of controversy in earlier days. Thus, in *Re Henry* [1907] 1 Ch. 30, the testator's estate was liable on a covenant to make an annual payment sufficient to make up the income of a certain fund to £1,000. By a deed of compromise this liability was commuted for a lump sum and the estate was released, half of the lump sum being provided by the tenant for life of a share of residue. Kekewich, J., held that she was entitled to be recouped the whole of this contribution out of corpus. But in *Re Perkins* [1907] 2 Ch. 596, Swinfen Eady, J., held that each instalment of a similar annuity was to be apportioned, as it accrued, between capital and income, by calculating what sum with interest at 3 per cent. from the date when the life estate started to the date of payment would have met that particular

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**Circuit 40-Middlesex**
His Hon. Judge Tylor, K.C.
His Hon. Judge Drucquer (Add.)
His Hon. Judge Alun Pugh (Add.)
Bow, 3, 4, 5, 6, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 30

**Circuit 41-Middlesex**
His Hon. Judge Earengey, K.C.
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Clerkenwell, 3, 4, 5, 6, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 30

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**Circuit 43-Middlesex**
His Hon. Judge Bensley Wells
Marylebone, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 30

**Circuit 44-Middlesex**
His Hon. Judge Drucquer
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Westminster, 4, 5, 6, 9, 10, 11, 12, 13, 16, 17, 18, 19, 20, 23, 24, 25, 26, 27, 30

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His Hon. Judge Hancock, M.C.
His Hon. Judge Hurst (Add.)
*Kingston, 3, 6, 10, 13, 17, 20, 24, 27
*Wandsworth, 2, 4, 5, 9, 11, 12, 16, 18, 19, 23, 25, 26, 30

**Circuit 46-Middlesex**
His Hon. Judge Neal
*Willesden, 9, 10, 11, 12, 13, 17, 18, 19, 20, 23, 24, 25, 26, 27

**Circuit 47—Kent**
His Hon. Judge Daynes, K.C.
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*Guildford, 5, 12, 19
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**Circuit 52—Wiltshire**
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*Bath, 5 (B.), 12 (B.)
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**Circuit 55 — Dorsetshire**
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Andover, 11
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*Bournemouth, 12 (R.), 16, 18, 19
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Tonbridge,
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**Circuit 59—Cornwall**
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* = Bankruptcy Court
† = Admiralty Court
(R.) = Registrar
(J.S.) = Judgment Summonses
(B.) = Bankruptcy
(R.B.) = Registrar in Bankruptcy
(Add.) = Additional Judge
(A.) = Admiralty

instalment: such sum was to be charged to capital; the rest to income. The learned judge expressed himself to be applying the rule in *Allhusen* v. *Whittell*, as merely as might be. In *Re Poyser* [1910] 2 Ch. 444, Parker, J., was invited to choose between the decision in *Re Perkins* and that in *Re Henry*, and elected in favour of *Re Perkins*, on the basis of *Allhusen* v. *Whittell*. In the circumstances *Re Poyser* may safely be treated as being decisive. The report contains a verbatim copy of the minutes of order, which will repay study by any practitioner who has to handle one of these cases. Incidentally, the rate of interest, for reasons not stated, was raised to 3½ per cent. in *Re Poyser*.

Another point of administration on which the earlier cases conflict, but which seems now to be settled, is as to the liability for the expense of packing, delivering and caring for chattels specifically bequeathed in the period between the testator's death and the assent. In *Sharp* v. *Lush* (1879), 10 Ch. D. 468, Jessel, M.R., held that the warehousing charges on specifically bequeathed chattels fell upon the executor, the will having expressly directed him to pay "executorship expenses" out of residue. The learned judge held that taking care of these assets was the duty of the executor as such, and so fell on residue. The sums in question were quite small. In *Re Pearce* [1909] 1 Ch. 819, Eve, J., decided that the expenses of maintaining a staff of servants to look after a specifically bequeathed yacht, some horses and carriages, and furniture, fell on the specific legatee, on the ground that the assent once made related back to the death and that, since any profits accruing between the death and the assent would go to the legatee, so also he should bear the losses. Here the sums were very large and the report mentions no direction as to the payment of testamentary expenses. Nor was *Sharp* v. *Lush* cited. In *Re Leach* [1923] 1 Ch. 161, Eve, J., held that the costs of packing and delivering specific legacies fell on the legatees. In this case there *was* an express direction to pay testamentary expenses out of residue. *Sharp* v. *Lush* again seems not to have been cited, nor was *Re Pearce*. But counsel for the specific legatees referred to *Re Hewett* [1920] W.N. 366, where the cost of packing and transporting specific legacies from Hong Kong to be distributed in England was held to fall on the general estate. Eve, J., gave no reasons except that he would follow a then recent shortly-reported decision of his own, namely, *Re Sivewright* [1922] W.N. 338.

The next case of importance was *Re Rooke* [1933] Ch. 970, where Maugham, J., had to consider the liability for the cost of upkeep of a specifically devised dwelling-house and its contents pending assent. Here *Re Pearce* and *Sharp* v. *Lush* were cited, but not *Re Leach*, *Re Hewett* or *Re Sivewright*. Maugham, J., in a full judgment, expressly preferred the reasoning in *Re Pearce* to that in *Sharp* v. *Lush*. It does not appear whether there was any express direction for the payment of testamentary expenses out of residue. The history of these cases is certainly unfortunate, and I very respectfully doubt whether enough attention has been paid in them to the presence or absence of an express direction as to the testamentary expenses. For this modern expression appears to be indistinguishable from "executorship expenses," the expression used in *Sharp* v. *Lush* and one which Jessel, M.R., expressly held to cover charges of the sort in question. The decisions in *Re Rooke*, *Re Pearce* and *Re Leach* are also open to abuse in that the personal representatives have little inducement to hurry in assenting or to exercise economy in their packing and storage arrangements. On the whole, however, it seems that the rule must be regarded as settled in the sense indicated in *Re Rooke*. In a recent unreported case where the point arose incidentally, Jenkins, J., intimated that on a point of this sort the more recent decisions are normally to be preferred and that he would follow *Re Rooke*. The decision seems likely to be the same in other courts of first instance, and there will seldom, if ever, be a case on the point in which enough is at stake to justify an appeal.

# LANDLORD AND TENANT NOTEBOOK

## ASSIGNMENT BY UNDERLEASE—II

In my first article on this subject (91 Sol. J. 275) I commented on the paucity of authority illustrating the consequence, as between landlord and tenant, of the grant by the latter of an interest exceeding the residue of his term. I suggested that what applied as between the grantor and grantee might not necessarily guide us when problems arose concerning the head or mesne landlord, whichever he was; and pointed out that there was little authority on what his rights were if, the underlease having been by deed and thus, according to most decisions, having brought about an assignment, it transpired that the terms of the "underlease" were at variance with those of the lease granted to its grantor. In *Palmer* v. *Edwards* (1783), 1 Dougl. 187*n*, Buller, J., deliberately refrained from expressing an opinion on this point, such not being necessary for the purposes of deciding the issue before him; and the conflict which arose as to the soundness of *Poultney* v. *Holmes* (1720), 1 Str. 405, likewise failed to produce any guidance.

But in *Wollaston* v. *Hakewill* (1841), 3 Man. & G. 297, the question arose in this way. An assignee of a 99-year lease from Michaelmas 1787, which reserved a ground rent of nine guineas a year, granted, in 1804, a lease of part of the property, for 99 years from Michaelmas, 1787, reserving a rent of £21 a year. The defendant was executrix of an executor of this grantee, and was sued for rent of the whole property, and for breaches of repairing covenants contained in the "head" lease; it was held that she was an assignee, and that as assignee of part she was liable for the performance of covenants affecting that part and the rest. As to whether the instrument operated as an assignment at all, the court considered that *Parmenter* v. *Webber* (1818), 8 Taunt. 593, settled this point (though actually it was between the two parties to the "underlease" and merely decided that the grantor had no right to distrain); but its value for present purposes lies in the view expressed as to excess rent by Tindal, C.J. His lordship considered that the defendant would be liable for this to the reversioner, though it *might be rent seck only*. The reasoning appears to be somewhat artificial.

*Beardman* v. *Wilson* (1868), 38 L.J.C.P. 91, raised the question of liability under a repairing covenant. A 61-year lease was granted in 1804, to expire at Ladyday 1865. In 1829 executors of the then lessee purported to grant an underlease to expire on the same date. The successors in title to the reversion of the 1804 instrument sued the successors in title to the term of that granted in 1829, for dilapidations. They were held not to be liable. Bovill, C.J., followed *Wollaston* v. *Hakewill* and also referred with approval to a number of cases between grantor and grantee of the second estate, and considered it settled law that if the latter grant were by deed the result was an assignment.

These two decisions appear to be the only authorities in which the rights of the first grantor have been directly adjudicated upon; in the one, he succeeded on the ground that the defendant, nominally an underlessee, was an assignee, and in the other he failed because he sued the estate of one held, by parity of reasoning, to have assigned the term.

But I suggest that more difficult problems may arise. The claim in *Wollaston* v. *Hakewill* was for rent and dilapidations; we are not told how the repairing covenants in the two instruments compared, though it is mentioned that those in the (head) lease were the usual ones, and presumably the so-called underlease repeated them. We are told of a difference in rent, but as the defendant's predecessor had agreed to a higher figure than that reserved by the (head) lease he could not complain of surprise. In *Beardman* v. *Wilson* we are given no details at all about the covenants to repair

for breach of which the action was brought, and again one must presume that there was no discrepancy.

But suppose that A demises property to B for a term of seven years and B during its currency assigns it to C who later purports to demise it (by deed) to D for ten years at a smaller rent? If the rent were higher, then according to *Wollaston* v. *Hakewill*, A could claim the full amount from D, though as regards the excess he would not be entitled to distrain; but is he now unable to sue D for the full amount, and must he claim the difference from B as original covenantor, C escaping liability? This is perhaps plausible; but habendum and reddendum are not the only important features of a lease. So what, one may wonder, can A do to D if B had covenanted with him to insure the premises against fire in the X office, while D was found not to have covenanted with C to insure at all, or to have covenanted to insure in some other office; and what are D's rights if he has covenanted with C not to carry on the business of a draper on the demised premises, and finds that A exacted no such covenant from B? Logically, on the two authorities mentioned, D holds of A not only for the same period but also on the same terms as those on which A granted the lease to B, for that lease is automatically assigned to him.

Leases, it has been pointed out, are sometimes called "terms" because from the point of view of the law relating to real property their finite nature is their main distinguishing characteristic. In my last article, I suggested that over-devotion to the principles that no one should be deemed a trespasser if a different conclusion can be reached, and that effect must be given as much as possible to what has been intended, might account for some confusion that exists concerning the rights of a tenant who purports to grant more than he holds as against his grantee. On this occasion I put forward the suggestion that over-concentration on the "term" aspect may lead to similar confusion in cases in which the rights of a landlord against some third party to whom his tenant has purported to grant more than the residue have to be determined.

### PRINCIPLES AND PRACTICE OF FURNISHED HOUSES RENT CONTROL

When reviewing Mr. A. L. Horton-Smith's "Retrospect" in our issue of 10th May last (91 SOL. J. 245), I inadvertently wrote: "valuation of attendance and furniture with a view to deciding upon its 'substantiality' is called for by both codes," i.e., the Rent and Mortgage Interest Restrictions Acts, 1920 to 1939, and the Furnished Houses (Rent Control) Act, 1946. The position is, of course, that such valuation of attendance and of furniture is called for by the former, but not by the latter; while substantiality of board is immaterial in the case of unfurnished, but vital in the case of furnished, dwellings. The point made by Mr. Horton-Smith (who has kindly called my attention to the error), the importance of which I sought to emphasise, was that the methods of calculation suggested by the Court of Appeal in *Palser* v. *Grinling* [1946] K.B. 631, and *Property Holding Co.* v. *Mischeff* [1946] K.B. 645, in the case of furniture and attendance could usefully be applied by rent tribunals having occasion, say, to assess the ratio between the value of a "continental" breakfast and the total sum payable by its consumer for that meal and the residential accommodation let to him.

# TO-DAY AND YESTERDAY

**May 26.**—Before Oscar Slater was convicted of the murder of eighty-three year old Miss Marion Gilchrist, in her Glasgow flat at Christmastide, 1908, the public at large was convinced of his guilt. Subsequently a reaction produced a petition in his favour signed by more than 20,000 people. On 26th May, 1909, the eve of the day fixed for his execution, an official letter from Whitehall reached the prison, stating that the death sentence had been commuted to penal servitude for life, and Slater went to Peterhead Prison. Gradually his innocence was established, but it was not till 1928 that the Justiciary Court at Edinburgh quashed the conviction. Slater was released and received £6,000 compensation from the Government.

**May 27.**—On 27th May, 1720, the Gray's Inn Benchers appointed a committee to "order a building at the east end of the Chapel for the fire engines." The Treasurer was also to take proposals for "rebuilding the garden house." Also the "east front of the Duchy Office" and the "portico of the gate out of Field Court into the Walks" needed repair. The Duchy Office was the office of the Duchy of Lancaster between the Hall and the Chapel and its east front and entrance was in a tiny court then enclosed by buildings in the north-east corner of Holborn Court. The small gate with an elaborate portico gave access to the gardens. In 1722 it was decided to replace it by the great wrought iron gates which still remain.

**May 28.**—Alan Chambre was called to the Bar at Gray's Inn on 28th May, 1767. Before joining the society he had been a member of Staple Inn. He was born in 1739, the son of Walter Chambre, Recorder of Kendal. He joined the Northern Circuit, prospered, and in 1799 was appointed a Baron of the Exchequer, being created serjeant-at-law expressly for the purpose of qualifying him. In the following year he removed to the Court of Common Pleas, where he remained till his resignation in 1815. He died at Harrogate in 1823 and was buried in the family vault at Kendal. He had the reputation of a careful, learned and courteous judge.

**May 29.**—On 29th May, 1918, there opened at the Old Bailey the trial of Noel Pemberton Billing for an alleged criminal libel on Miss Maud Allan, the classical dancer. She had privately performed Oscar Wilde's "Salome," and the attack on her was not only an imputation of sexual perversion but also sought to link her with 47,000 highly placed persons, whose moral life was alleged to have laid them open to inclusion in a "Black Book" kept by the German secret service for purposes of political blackmail. In the absence of the Lord Chief Justice, Darling, J., as senior puisne, elected to try this sensational case. The defendant, who conducted his case in person, began by objecting to the judge on the ground of his notorious levity. Darling overruled the point, but was quite unequal to coping with the sequel. Billing, disregarding every rule of evidence and good conduct, scored again and again, while his sympathisers laughed and cheered. The mildest statements fed the fires of war-time suspicion and hysteria, and the mob smashed the windows of those who had the misfortune to be recklessly mentioned. In this atmosphere Billing was acquitted.

**May 30.**—On 30th May, 1555, John Cardmaker and John Warne were burnt at Smithfield during the Marian persecution. Cardmaker had been Vicar of St. Bride's, Fleet Street, and Prebendary and Chancellor of Wells. Warne was a humble clothworker of Walbrook.

**May 31.**—On 31st May, 1799, John Perry, editor of the *Courier* newspaper, was sentenced in the Court of King's Bench to £100 fine and six months' imprisonment for a paragraph calling the Emperor of Russia "a tyrant among his own subjects and ridiculous to the rest of Europe."

**June 1.**—The Palsgrave's Head Tavern formerly stood in an alley running down from the Strand to Essex Court. On 1st June, 1650, John Richardson, the tenant of it, agreed to conditions on which the Middle Temple Benchers consented to allow him to make a gate into the court. The lock was to be on the Temple side and the key in the keeping of the Temple porter, to whom he was to pay 5s. a quarter for opening and shutting the gate at the prescribed times.

### JUDGES' SALARIES

In answer to a question in the House of Commons recently, the Financial Secretary to the Treasury rejected a suggestion that legislation should be introduced to increase the salaries of the High Court judges or afford them tax relief in view of the fact that those now being paid were fixed in 1832. But the case for a belated reconsideration of the financial position of the judges is stronger even than the form of the question suggested, for the 1832 figure of £5,000 actually represented a reduction by £500 below the level fixed seven years previously. The only concession granted was that judges already appointed should continue to be remunerated at the former rate. The decrease represented a drop to the level fixed in 1809, but that level was a considerable improvement on that of 1799, when, by the statute 39 Geo. 3, c. 110, the salaries granted to the judges were a mere £3,000 a year. It is worth noting that the subsequent augmentation was made in view of the high cost of living brought about by the

Napoleonic Wars. Moreover, the heavy income tax (10 per cent.) invented to finance the war effort, as well as the burden of land tax, had placed an additional strain on the judges' resources. Since then two major wars have been fought, raising taxation and the cost of living to hitherto unbelievable heights, yet the judges, so far as the Financial Secretary to the Treasury is concerned, are still living in the period when Jane Austen was publishing "Sense and Sensibility." In fact, since current taxation leaves the judges about half their salaries, they are evidently worse off, on the basis of actual money to spend, than they were in 1799, quite apart from any calculations as to the diminished purchasing power of the pound.

EARLIER RATES

Throughout the eighteenth century the salaries of the judges have steadily risen. In 1714 they went up from £1,000 to £1,500. In 1758 they were found "inadequate to the dignity and importance" of the judicial office, and rose to £2,000. In 1779 a surplus from the stamp duties brought them another £400. On paper these figures compare very favourably with salaries of £6 13s. 4d. (or 10 marks) in the reign of Henry III or even £128 6s. 8d. for "fee, reward and robes," plus £20 "allowance as judge of assize" under Elizabeth. However, the judges certainly had additional sources of income—presents, perquisites, fees coming to them in accordance with a variety of customs. These might include little gifts of sugar loaves or the £40 a year that was being paid in the eighteenth century to the second judge of the King's Bench "for his trouble in giving the charge, every term, to the Grand Jury of Middlesex." By the eighteenth century these charming little variations on the theme of judicial remuneration were dying out, but in earlier times they had represented a substantial proportion of the judges' incomes. Thus when Henry VIII, among other equally unwelcome innovations, introduced a 5 per cent. tax on income, two of the King's Bench judges were assessed at £400 and £200 respectively, a good deal more than their nominal salaries. I have, of course, been discussing the salaries of the puisne judges. The Chief Justices were rewarded on a more liberal scale and had also more additional benefits.

# COUNTY COURT LETTER

### Discharge from Bankruptcy

IN a case at Birmingham County Court an ex-clothing manufacturer applied for his discharge from bankruptcy. The adjudication was in 1940, with liabilities estimated at £1,892. The actual amount, however, was £5,630. An application for discharge in 1942 had been held by His Honour Judge Dale to be premature. In August, 1945, the applicant's father had died, and the applicant hoped to receive £700 from the estate. A further £250 might accrue to the applicant from the estate of his wife, who had died recently. A brother would lend the applicant money, pending the realisation of the estates. His Honour Judge Finnemore granted the application, the order to lie in the office until a payment of £250 was made.

### Husband's Claim to House

IN *Coe* v. *Coe*, at Birmingham County Court, the claim was for possession of a house. The case for the applicant was that the respondent (his wife) had recently obtained against him an order for restitution of conjugal rights. This was a device to retain possession of the house and furniture—his only assets. His salary was £400 a year and he had to pay £1 10s. a week in alimony. The respondent's case was that the question of the house should be decided in the High Court in a pending claim for ancillary relief. She was penniless and not able to earn money. His Honour Judge Finnemore observed that he had no right to disclaim jurisdiction. It would be more convenient if the question were decided in the High Court. An adjournment was accordingly granted to await the result of the proceedings in the Divorce Registry.

### Alleged Abandonment of Tenancy

IN *Walsall Corporation* v. *Pelari and Wife*, at Walsall County Court, the claim was for possession of a municipal house. The plaintiffs' case was that the defendants were originally sub-tenants of the wife's unmarried sister, who had left the house in their possession. When the original tenant left the house it became vacant by being abandoned. The defendants' case was that no notice to quit had been served, and the original tenancy was still in existence. Rent had also been accepted from the wife. For the plaintiffs it was contended that they could not keep houses vacant while a notice to quit was expiring. His Honour Judge Whitmee observed that a tenant was entitled to go away and leave someone else in a house. The corporation must give notice to quit, like any other landlord, in conformity with their contract, however inconvenient it might be. There was no evidence of abandonment, and judgment was given for the defendants, with costs.

### *Decision under the Workmen's Compensation Acts*

### Double Hernia

IN *Vaughan* v. *Shaw*, at Chippenham County Court, the applicant's case was that he was sixty-seven and an estate worker earning £3 5s. a week. Owing to a fall, the applicant had sustained a double hernia. This caused partial incapacity, and the applicant could only now earn an average weekly wage of 30s. The respondent did not admit the alleged accident, but offered £50 as an ex gratia payment. By consent, His Honour Judge Kirkhouse Jenkins, K.C., made an award of £50 with £10 10s. costs.

# POINTS IN PRACTICE

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**Joint purchases in name of husband and wife by husband—**
ADVANCEMENT

*Q.* H died recently intestate, leaving surviving his widow W, one brother and one sister, but no issue. From time to time, throughout his life, H had invested large sums of money (totalling over £30,000) in Government stocks and in freehold and leasehold properties in the joint names of himself and W. The money so invested had been earned by H in his trade. His wife contributed no part of it. According to W, the intention of H (declared to her verbally from time to time) was that she should benefit by survivorship, but there is no written evidence of H's intention one way or the other. Apart from the joint property H left only about £700 invested in his name alone. Having regard to the provisions of the Administration of Estates Act, 1925, relating to intestacy, the question is whether, subject to the life interest of W in the residue as defined by the said Act, the brother and sister of H have any interest in one half or some other fraction of the property held by H and W jointly as aforesaid. W naturally asserts that the brother and sister have no interest whatsoever in any part of such property. Please state briefly the principles or refer to passages in text books dealing with the principles that should be applied to decide whether the claim of the brother and sister can be upheld.

*A.* We quote the following from vol. II, p. 839, of "White and Tudor's Leading Cases in Equity":—

> "Where the husband makes an investment, such as money or stock, in the names of himself and his wife, it is an advancement for the benefit of the wife absolutely if she survives her husband (*Re Young* (1885), 28 Ch. D. 705)."

We do not think that the purchase of freeholds and leaseholds would be regarded differently from an investment of stock. The purchase in the joint names, however, merely creates a presumption of an intention to advance the wife. It is in a sense a circumstance of evidence of an intention to advance. Thus the presumption may be rebutted, by suitable evidence, which need not necessarily be written. We gather that there is probably no evidence which would rebut the presumption. If that be so then the wife is absolutely entitled.

**Damage by Fire**

*Q.* Under the Fires Prevention (Metropolis) Act, 1774, it is provided that no action shall be maintainable against any person on whose building or estate a fire shall accidentally begin. An omnibus, whilst being driven along the highway, is seen to be on fire by the passengers. The conductress informs the driver, who immediately brings the bus to a standstill. The bus is burned out, and adjoining property suffers substantial damage. In the absence of proof of negligence against the owner or driver of the bus, is there any liability in respect of the damage occasioned to the property which suffers damage through the fire, or does the above-mentioned Act provide a defence to any action?

*A.* The Act quoted in the query only provides a defence in the case of fire spreading from land or buildings. Although it would not protect the owner or driver of the bus, the owner of the damaged property could not succeed in the absence of negligence. The bus was using the highway for a lawful purpose (*Musgrove* v. *Pandelis* [1919] 2 K.B. 43 is distinguishable).

# REVIEWS

**Jervis on the Office and Duties of Coroners.** Eighth Edition. By W. B. PURCHASE, M.C., M.B., B.Ch. (Cantab.), D.P.H., of the Inner Temple, Barrister-at-Law. 1946. London: Sweet & Maxwell, Ltd., and Stevens & Sons, Ltd. 30s. net.

This is the first new edition of Sir John Jervis' famous work since Mr. Waldo's edition of 1927, following on the passing of the Coroners (Amendment) Act, 1926. Dr. Purchase, Coroner for the County of London, and Secretary of the Coroners' Society of England and Wales, who has edited the present edition, has recast the book into its original narrative style, and in order to do so has taken pains to study the text of the first edition. An admirable work of restoration is the result, and fresh detail is painted in so as to make the picture symmetrical and harmonious. Solicitors will find much to interest them in these pages, for example, the curtailment of the personal professional activity of a solicitor-coroner in s. 10 of the Coroners Act, 1887, and the rules of procedure laid down by the Coroners' Society of England and Wales for the guidance of coroners. Solicitors will also be grateful to find a full account of the law with regard to the publicity of proceedings before the coroner. Some coroners are a little too free with their threats of forcible expulsion when advocates appear troublesome in the course of their duties, and the discreet note on *Garnett* v. *Ferrand* (1827), 6 B. & C. 611, should warn coroners that this can only be right in exceptional cases: "Even the forcible exclusion of a person from the court may be justified." It would be interesting to know what, if any, is the authority for the observation at p. 82, that conferment of the right of representation does not give counsel or solicitor the right to address the coroner. On this matter our only criticism is that it is generally considered to be the law, but we fail to see why. This edition maintains the great traditions of this 120-year-old classic.

**More Legal Fictions.** By A. LAURENCE POLAK, B.A., Solicitor of the Supreme Court. 1946. London: Stevens & Sons, Ltd. 6s. net.

This fitting of the "facts" of Shakespeare's plots into the framework of modern legal principle is quite ingenious and has amusing possibilities, particularly in the contrast between the dry judicial language of the judgments "reported" and the stories in their original poetic form. There is the discussion whether Hamlet's father met his death through poison "extraneously injected"; Caliban's mother is described as "the owner (apparently in fee simple) of a small island in the Mediterranean Sea"; it is laid down in *Attorney-General* v. *Albany* that "a paternal curse is not legal tender" and that "the liability on the obligers of being changed into toads . . . cannot be said to fall within the equitable doctrine of conversion." And there is plenty more fun of the same sort. The style lacks the satirical edge of Herbert's "Misleading Cases" and of the "Forensic Fables," but presumably the author did not set out to write satire. The weakest element of the book lies in the illustrations, though doubtless they will appeal to those who like their humour slapped on with a trowel.

**Evidence and Procedure in Magistrates' Courts.** By WILLIAM SHAW, M.A., formerly Clerk to the Justices for the City of Manchester. 1946. London: Butterworth & Co. (Publishers), Ltd. 6s. net.

Here at last is an ideal introduction to the work of the magistrates' courts and its machinery. The author's experience as clerk to the justices at Manchester and as lecturer to justices on behalf of the Magistrates' Association has been crystallised in this admirable little work. In the simplest and least technical manner all the important rules of evidence are here for those who wish to learn, whether they be justices, clerks or advocates.

**The National Insurance Act, 1946.** By DOUGLAS POTTER, M.A., of the Inner Temple, Barrister-at-Law. 1946. London: Butterworth & Co. (Publishers), Ltd. 21s. net.

This Act will come into force on the appointed day, and will replace the existing National Insurance schemes. It provides for payments by way of unemployment, maternity, sickness and widow's benefit, also for retirement pensions and death grants. The present volume contains a comprehensive general introduction which is followed by a full text of the statute annotated and explained. Copious footnotes to the sections indicate the wide field covered by this Act, which is based mainly upon the Beveridge Report. The publishers are to be congratulated upon issuing this volume so soon after the Royal Assent being given to the Act, which will be of vital concern to a large proportion of the population.

# NOTES OF CASES

## COURT OF APPEAL

*In re* **Vicker's Lease; Pocock** *v.* **Vickers**

Lord Greene, M.R., Morton and Asquith, L.JJ.

1st April, 1947

*Landlord and tenant—Fishing rights demised—Landlord reserves one rod for her own use—Whether right assignable.*

Appeal from a decision of Roxburgh, J.

By a lease, dated the 15th December, 1933, the owner demised for a term of twenty-one years, from the 25th December, 1933, a dwelling-house and some land, together with certain fishing rights, to T. The rent reserved for the fishing rights was £250. The tenant entered into a number of somewhat onerous covenants intended to protect and preserve the fishing, including a covenant to exercise the fishing rights in a sportsmanlike manner. Certain methods of fishing were prohibited. Clause 3 of the lease provided as follows: "It is hereby understood and agreed that the owner shall retain for her own use a rod in the said fishing but not on either bank between M. and G." Both the landlord and the tenant had died. A summons was taken out by the tenant's executors claiming a declaration that on the true construction of the lease the fishing rights vested in the landlord were not exercisable after her death. Roxburgh, J., held that the right passed to the landlord's personal representatives and could be assigned by them. The personal representatives of the tenant appealed.

LORD GREENE, M.R., said that it was argued for the executors of the landlord that cl. 3 could not be an exception or reservation because there could not be an exception or reservation of a *profit à prendre*. In such circumstances there could only be a *profit à prendre* created by a regrant. This was a regrant of a *profit à prendre* for the beneficial use of the landlord herself and as such was capable not merely of personal enjoyment but of alienation by her or by her successors in title after her death. It was admitted that there was nothing in law to prevent the giving of a personal right, exercisable by nobody else, to fish and take away the fish. It was contended, however, that very clear words were required to produce this result. On the other hand it was contended for the executors of the tenant that this was a purely contractual matter and there was no question of exception or reservation. Nor were the words what one would expect to find in the case of a regrant, and reliance was placed on the words "for her own use." He (his lordship) inferred from the whole tenor of the document and the covenants in it that fishing in this particular river was a thing in which you wanted to know your fisherman and it would be natural for a person granting a rod to exercise some choice in the person to whom he granted it. If the respondents' contention was correct the landlord could have assigned the right to anyone she chose. That was a right which he would not have expected to find in a document of this kind unless the language compelled him, and when he found that the right in question was put in a three line clause by itself, expressed in language which was more apt to express a contractual obligation than the creation of such a right as a *profit à prendre*, he was confirmed in the view that the proper construction was that it was a contractual obligation. The appeal succeeded.

MORTON and ASQUITH, L.JJ., agreed that the appeal succeeded.

COUNSEL: *A. C. Nesbitt; Andrew Clark*, K.C., and *G. C. Dunbar*.

SOLICITORS: *Holmes, Son & Pott; Montagu's & Cox & Cardale*, for *Branson & Son*, Sheffield.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

**Robinson and Others** *v.* **Minister of Town and Country Planning**

Lord Greene, M.R., Somervell and Wrottesley, L.JJ.

12th May, 1947

*Town and Country Planning—Land in war-damaged area made subject to compulsory purchase—Objection—Undamaged property—Powers of Minister—Town and Country Planning Act*, 1944 (7 & 8 *Geo.* 6, *c.* 47), *s.* 1 (1).

Appeal from Henn Collins, J.

A street called "The Crescent" at Plymouth consisted of eighteen houses, of which six were destroyed by enemy action and one badly damaged, and in the result the respondents now owned, in the Crescent, five undamaged houses, one damaged house and the sites of three destroyed houses. On an application, dated 8th February, 1946, by Plymouth Corporation, under s. 1 (1) of the Town and Country Planning Act, 1944, the appellant, the Minister of Town and Country Planning,

made an order, dated 6th November, 1946, declaring that all the land in a war-damaged area in the centre of Plymouth delineated in the corporation's application should be subject to compulsory purchase by the corporation. The lay-out plan submitted by the corporation with their application showed that it was not proposed to do anything to the five undamaged houses belonging to the respondent-owners. The owners having objected to the corporation's proposal, the Minister caused a public local inquiry to be held by an inspector of his Ministry. The Minister stated in an affidavit that he had personally considered the objections made at the inquiry and the report of the inspector, and that he was satisfied that the houses in the Crescent had sustained war damage and were contiguous or adjacent to land which had suffered war damage, and that it was requisite for the purpose of dealing satisfactorily with extensive war damage that the land included in the application should be laid out afresh and redeveloped as a whole. He thereupon made the order of 6th November, 1946. Evidence was given for the corporation at the public local inquiry that the surviving buildings in the Crescent were to be left intact, destroyed houses reinstated so far as possible, the façade retained, but reconstruction effected behind it as the houses would not remain as dwelling-houses, but would develop into offices, hotels, etc. It was contended for the owners that the Minister's order was bad because by s. 1 (1) of the Act of 1944 his power to make it arose only when he was "satisfied" that it was requisite that the area to which it related should be laid out afresh and redeveloped as a whole; that he could only be "satisfied" within the meaning of the subsection if he had before him evidence sufficient in law to entitle him to be "satisfied"; and that the evidence was not such as could satisfy him since the surviving houses were to be left intact and those damaged rebuilt. Henn Collins, J., allowed the owners' appeal for reasons which he stated in *Phœnix Assurance Co., Ltd.* v. *Minister of Health*, the facts in which were similar, and quashed the Minister's order so far as it related to these properties. The Minister appealed.

By s. 1 (1) of the Act of 1944: "Where the Minister . . . is satisfied that it is requisite, for the purpose of dealing satisfactorily with extensive war damage in the area of a local planning authority, that a part or parts of their area, consisting of land shown to his satisfaction to have sustained war damage or of such land together with other land . . . adjacent thereto, should be laid out afresh and redeveloped as a whole, an order declaring all or any of the land in such a part of their area to be land subject to compulsory purchase . . . may be made by the Minister" on the application of the local authority. (*Cur. adv. vult.*)

LORD GREENE, M.R., in a written judgment, said that the owners' contentions were based on fundamental misconceptions as to the purpose and effect of an order made under s. 1 (1). It was in no respect an order approving or confirming any proposals of the local planning authority as to fresh lay-out or redevelopment. The confirmation of those proposals was not the issue submitted to him. Whether he approved or disapproved of any of them, he might still make an order, since all that s. 1 (1) required him to be satisfied of was the requisiteness of laying out afresh and redeveloping as a whole an area of war-damaged land (with or without adjacent land) for the purpose of dealing with extensive war damage. He might well be satisfied as to that whatever the planning authority might propose as being their actual plans at the time of the application. The Act gave the Minister effective control of the form which the lay-out and redevelopment were ultimately to take, since at a later stage he could, for example, refuse to authorise compulsory purchase (s. 31) and withhold money grants (s. 5). He was, at the present stage, only concerned with what might be described as a standstill order declaring the land to be subject to compulsory purchase. The fact that by s. 1 (6) the planning authority were required to indicate the manner in which they intended to lay out the land was not for the purpose of obtaining approval for those plans but only in order to assist the Minister in coming to the conclusion as to requisiteness to which s. 1 (1) required him first to come. If the Minister's order had purported to sanction the lay-out shown by the planning authority's "designation map" accompanying their application, it would have been *ultra vires* the subsection. The matters with regard to which the Minister must be satisfied before he made the order fell into two classes: (1) that a particular state of facts existed, namely, that a part or parts of the area of the planning authority consisted of land which had sustained war damage; no question was here raised as to the propriety of the Minister's conclusion on that point. (2) Matters of opinion and policy as to which the Minister, always assuming that he acted *bona fide*, was sole judge: he must be satisfied of the necessity for laying out afresh and redeveloping. The words "requisite" and "satisfied" clearly indicated that the matter was one of opinion and policy, and one peculiarly for the Minister to decide. No objective test was possible. Confirmation for that view was to be found in Sched. I to the Act, under which the Minister was entitled to make his decision without any public local inquiry or private hearing. The decision, and the principles and policy which led him to it, were such as commended themselves to him. The object of an inquiry under the Schedule could only be to elucidate matters on which he wished to be better informed. Nothing said at it could bind his discretion, although it might have some bearing on the question of *bona fides*. In exercising his discretion he was not confined to the evidence given at the inquiry. Such matters formed only part of the considerations which he was entitled to take into account. It was argued for the owners that the lay-out plan on its face and the evidence given at the inquiry revealed no intention of redeveloping or laying out the Crescent afresh; that, so far as the court was informed, the Minister had no other materials before him; and that on those materials it was impossible in law for him to be satisfied as to the stipulated requisiteness. If guided by other matters outside the inquiry, it was then argued, the Minister must communicate those matters to the objectors so that they might meet them. That argument must be rejected. It imported an objective test into a matter to which such a test was inappropriate, since it left to the court to decide what matters were or were not sufficient to justify a conclusion as to requisiteness. That meant that the court had to propound for itself the question whether the Minister had before him such evidence as would entitle him to be satisfied on the point of requisiteness. That was to substitute for the opinion of the Minister a test formulated, in some unexplained manner and according to some unascertainable principle, by the court itself. It was to the Minister, however, that s. 1 (1) committed the decision. As for the planning authority's intentions with regard to the Crescent, s. 1 (1) referred to the laying out afresh and redevelopment of the area as a whole. Those words could not mean that an existing building which it was not intended to touch would have to be excluded from the order. It was not the redevelopment of the whole area but the redevelopment of the area as a whole which was contemplated. It was also impossible to accept the owner's contention that a change of user of a building could not amount to a fresh lay-out or redevelopment. The concluding words of s. 1 (6) showed that it could. He (his lordship) based his judgment on the particular provisions of the Act of 1944. He found nothing in the authorities sufficiently helpful or impeding to make them worth citing. For example, this was not an appeal: an original order had been made by the Minister: to say that in coming to his decision he was in any sense acting in a quasi-judicial capacity was to misunderstand the whole position. Whether or not the inquiry must be conducted on quasi-judicial principles, such principles were not applicable to the doing of the executive act itself, that was, making the order. The executive decision to make the order could not be controlled by the court by reference to the evidence or lack of evidence at the inquiry on which the owners relied. Different considerations applied where a Minister could be shown to have overstepped the limits of his statutory powers. The owners' attempt to bring the present case into that category failed. The appeal must be allowed.

SOMERVELL and WROTTESLEY, L.JJ., read concurring judgments.

COUNSEL: *The Attorney-General* (Sir Hartley Shawcross, K.C.), and *H. L. Parker*; *Scott Henderson*, K.C., and *Molony*.

SOLICITORS: *Treasury Solicitor*; *Gregory, Rowcliffe & Co.*, for *Bond, Pearce, Eliott & Knape*, Plymouth.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law]

## KING'S BENCH DIVISION

### Andrews *v.* Cordiner

Lord Goddard, C.J., Atkinson and Oliver, JJ.
16th April, 1947

*Evidence—Bastardy—Non-access—Proof by means of husband's service record—Evidence Act*, 1938 (1 & 2 *Geo.* 5, *c.* 28), *s.* 1.

Case stated by East Coquetdale (Northumberland) justices.

A complaint was preferred by the respondent, Mrs. Isabella Cordiner, against the appellant, John Robert Andrews, alleging that he was the putative father of a bastard child born to the complainant. The complaint was preferred on 25th March, 1946, the child having been born on the 10th March, 1945. The complainant, being a married woman, had to establish that she was a single woman within the meaning of the Bastardy Acts by proving that there had been no possibility of her husband's

having access to her during the nine months preceding the birth of the child. The justices, not being satisfied on that point, granted an adjournment. At the adjourned hearing a warrant officer in the Records Office of the Royal Air Force at Gloucester produced the service record relating to the complainant's husband. It was contended for the putative father that the record in effect constituted hearsay evidence and was not admissible, and that as the remaining evidence of non-access had not been found conclusive, the complaint should be dismissed. The justices found the complainant's case otherwise made out, and left for the opinion of the court whether the service record had been properly admitted. The putative father now appealed.

OLIVER, J., delivering the judgment of the court, recalled that a married woman who brought bastardy proceedings could not succeed unless she proved affirmatively that there was no possibility of access during the period of gestation. For the purpose of establishing non-access, a warrant officer in the Records Office of the Royal Air Force at Gloucester was called, who deposed that it was part of his duty to take charge of the service records of various personnel in the Royal Air Force and that those records showed, *inter alia*, the dates of departure from and return to the United Kingdom of members of the Royal Air Force. He produced the permanent record relating to the complainant's husband. The record disclosed that the husband had gone to the Middle East on 17th May, 1943, and served continuously overseas until 19th November, 1945, and that at no time during that period of service had he been granted leave to the United Kingdom. The record was the property of the Air Ministry and stated to be "a Crown privileged document." There was no direct authority on the matter, but it was argued for the putative father that the justices were wrong in holding that that evidence was admissible under the Evidence Act, 1938. It was unnecessary to consider whether it would be admissible in a criminal case, this not being such a case, and the Evidence Act being applicable. It was conceded by counsel that the regimental record fell within the definition in s. 1 (1) (i): "if the maker of the statement either (*a*) had personal knowledge of the matters dealt with by the statement; or (*b*) where the document in question is or forms part of a record purporting to be a continuous record, made the statement (in so far as the matters dealt with thereby are not within his personal knowledge) in the performance of a duty to record information supplied to him by a person who had, or might reasonably be supposed to have, personal knowledge of those matters . . . Provided that the condition that the maker of the statement shall be called as a witness need not be satisfied if he is dead, or unfit by reason of his bodily or mental condition to attend as a witness, or if he is beyond the seas and it is not reasonably practicable to secure his attendance, or if all reasonable efforts to find him have been made without success." It was certainly a reasonable inference that one or more of the presumably numerous makers of entries in this regimental record were, or had at material times been, abroad. Section 1 (2) gave an exceedingly wide power, upon which, certainly in part, the justices had acted "if having regard to all the circumstances of the case" the court "is satisfied that undue delay or expense would otherwise be caused." It was difficult to imagine a case in which more undue delay and expense would probably be caused than by ordering that everybody who had made an entry in a regimental record of this sort should be brought from abroad or elsewhere to give evidence about it. Section 1 (4) was mainly relied upon by counsel. He argued that there was no evidence that the conditions there prescribed were satisfied. Section 1 (5), however, extricated the matter from difficulty. How could any document have greater probability of accuracy—and that is, after all, why it is relied on—or come from a more attractive source, than a regimental record of this nature? The nature of the document, the fact that it came from the proper custody, and the fact that it was produced by the officer in custody of it, there being no temptation on anyone's part to record entries falsely, all went to show that the entries were true. The justices properly admitted the evidence, and the appeal was dismissed.

COUNSEL: *Charlesworth; the complainant did not appear.*

SOLICITORS: *Hyde, Mahon & Pascall*, for *Frank J. Lambert and Co.*, Gateshead.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

# OBITUARY

MR. S. J. BURNIE

Mr. Sidney Johnstone Burnie, solicitor, of Nottingham, died recently, aged sixty-four. He was admitted in 1905.

MR. H. S. HOLMES

Mr. Herbert Scott Holmes, solicitor, of Messrs. Flint and Holmes, solicitors, of Salford, died recently, aged forty-four. He was admitted in 1926, and was Deputy Coroner for Salford and the Salford Hundred Division of Lancashire.

MR. C. W. INGHAM

Mr. Charles William Ingham, solicitor, of Messrs. Ingham and Wainwright, solicitors, of Stockport, died recently, aged sixty. He was admitted in 1914.

SIR JOHN FISCHER WILLIAMS, K.C.

Sir John Fischer Williams, C.B.E., K.C., died on Saturday, 17th May, aged seventy-seven. He was called by Lincoln's Inn in 1894, took silk in 1921 and was knighted two years later. He had been British Member of the Permanent Court of Arbitration at The Hague from 1936, and was well known for his writings on international law. An appreciation appears at p. 283, *ante*.

# PARLIAMENTARY NEWS

## ROYAL ASSENT

The following Bills received the Royal Assent on 21st May:—

COTTON (CENTRALISED BUYING).
COTTON INDUSTRY WAR MEMORIAL TRUST.
NATIONAL HEALTH SERVICE (SCOTLAND).

## HOUSE OF LORDS

Read First Time:—

HELSTON AND PORTHLEVEN WATER BILL [H.C.]. [19th May.
LUTON CORPORATION BILL [H.C.]. [22nd May.
NOTTINGHAM CORPORATION BILL [H.C.]. [22nd May.
TOWN AND COUNTRY PLANNING BILL [H.C.]. [21st May.

Read Second Time:—

CUMBERLAND COUNTY COUNCIL (WATER, ETC.) BILL [H.L.]. [20th May.
TRANSPORT BILL [H.C.]. [21st May.

Read Third Time:—

CHESHIRE AND LANCASHIRE COUNTY COUNCILS (RUNCORN-WIDNES BRIDGE, ETC.) BILL [H.L.]. [21st May.
SOUTH METROPOLITAN GAS BILL [H.L.]. [21st May.
WEAR NAVIGATION AND SUNDERLAND DOCK BILL [H.L.]. [20th May.

In Committee:—

TRAFALGAR ESTATES BILL [H.C.]. [21st May.

## HOUSE OF COMMONS

Read First Time:—

PROBATION OFFICERS (SUPERANNUATION) BILL [H.C.]. [23rd May.

To make fresh provision with respect to the payment of superannuation allowances and gratuities to or in respect of probation officers and certain former probation officers and to make provision with respect to the payment of such allowances and gratuities to or in respect of clerks appointed to assist probation officers in the performance of their duties.

Read Second Time:—

FINANCE BILL [H.C.]. [19th May.
LONDON COUNTY COUNCIL (IMPROVEMENTS) BILL [H.C.]. [20th May.
NEWHAVEN AND SEAFORD DEFENCES BILL [H.C.]. [20th May.

Read Third Time:—

HAVANT AND WATERLOO URBAN DISTRICT COUNCIL BILL [H.L.]. [23rd May.
NATIONAL SERVICE BILL [H.C.]. [22nd May.
PRESTON CORPORATION BILL [H.C.]. [23rd May.
STATISTICS OF TRADE BILL [H.C.]. [22nd May.

## QUESTIONS TO MINISTERS

WORKMEN'S COMPENSATION

VISCOUNT SIMON rose to ask His Majesty's Government what is the present position of Government proposals for dealing with alternative remedies which it is admitted must be provided for by further legislation before the Workmen's Compensation Acts are repealed and the Industrial Injuries Act comes into force?

The LORD CHANCELLOR: I expect to be able to introduce a Bill early next session in time to be passed before the Industrial Injuries Act is brought into operation. [19th May.

DISPOSSESSED FARMERS (COMPENSATION)

Sir W. SMITHERS asked the Minister of Agriculture the number of dispossessed farmers and smallholders who are not getting rental compensation; and if he will write to all dispossessed farmers to indicate that they are entitled to compensation and the steps they should take to secure it and that all reasonable expenses will be paid.

Mr. T. WILLIAMS: Information is not obtainable, without undue expenditure of time on investigation, as to the character

of all the land taken into possession by county war agricultural executive committees, and the following information relates to areas of 5 acres or more. There are 811 cases in England and Wales in which persons entitled to compensation rental under the Compensation (Defence) Act, 1939, are not yet receiving such rental. Whenever the person entitled is known, he is informed by the county committee of his right to compensation and is supplied with the necessary forms for making a claim. The procedure is now well known, and I do not consider that any further special notification is called for. [19th May.

GENERAL REGISTER OFFICE (BIRTH CERTIFICATES)

Mr. SHARP asked the Minister of Health what is the average time taken by the Registrar-General's office to answer correspondence calling for evidence about the date of birth of an individual, particularly in respect of claims for old age pensions and family allowances; and what action has been, and is being, taken to reduce the time required.

Mr. BEVAN: I am informed by the Registrar-General that, owing mainly to heavy arrears accumulated during the period of lighting restrictions, the average time taken is about three weeks as compared with the normal three or four days. Extra assistance is being recruited for this section. The special birth certificates for old age pension and family allowance purposes are not obtained from the General Register Office but from local superintendent registrars. [20th May.

WOMEN AND YOUNG PERSONS (EMERGENCY ORDER)

Mr. SARGOOD asked the Minister of Labour whether the Factories Act, 1937, Hours of Women and Young Persons General Emergency Order of 31st May, 1941, for Engineering and Certain Classes of Works, extended in 1942 until further notice, permitting the relaxation of ss. 70 and 74 of Pt. V of the Factories Act, 1937, is still in force.

Mr. ISAACS: Yes, but the Order only authorises relaxations if and to the extent that there is a written permission for the particular factory. The number of factories with permission under the Order has fallen to less than 400, as compared with about 15,000 in wartime. [21st May.

PROSECUTING COUNSEL (INSTRUCTIONS)

Mr. HOGG asked the Attorney-General whether any particular instructions are issued to counsel prosecuting on behalf of Government Departments to press for prison or any other specific sentences; and if he will give an assurance that the long-standing tradition of the Bar touching the duties of prosecuting will be respected.

The ATTORNEY-GENERAL: I am not aware of any case in which counsel prosecuting on behalf of a Government Department has been given instructions that are not in accordance with the well-established traditions of the Bar in these matters, and I hope that members of both branches of the profession will bring any such cases to my attention. [22nd May.

HIGH COURT JUDGES (SALARY)

Wing-Commander HULBERT asked the Chancellor of the Exchequer why the Government declined to recommend an increased salary for High Court judges.

Mr. GLENVIL HALL: His Majesty's Government do not consider the present salary inadequate, especially having regard to the value of pension rights. [22nd May.

RENT TRIBUNALS (POWERS)

Mr. SWINGLER asked the Minister of Health whether his attention has been called to certain observations of the Lord Chief Justice on limitations of the powers of rent tribunals; and if he will issue instructions to make clear the precise scope of their powers under the Furnished Houses (Rent Control) Act, 1946.

Mr. BEVAN: Yes, sir. I have under consideration the question of communicating with the rent tribunals in this matter. [22nd May.

RENTS, LONDON

Mr. LAW asked the Minister of Health if he is aware of the exorbitant rents and premiums being charged for houses and flats in the London area which do not come within the Rent Restrictions Act; and if he will now take steps to deal with it.

Mr. BEVAN: No special representations have been made to me on this matter recently. Legislation, of which there is no early prospect, would be required to amend the existing law, and I should point out that the Ridley Committee, who examined the question of rent control very fully, recommend in their report, published in 1945 (Cmd. 6621), that the existing limits of rateable value within which the Acts apply should remain unchanged. [22nd May.

PENSIONS APPEALS (HIGH COURT JUDGMENT)

Mr. DRIBERG asked the Attorney-General if his attention has been called to the judgment delivered by Mr. Justice Denning on 5th May, to the effect that a decision by a pensions appeal tribunal to reject an appeal must be unanimous; how many such rejections have been unanimous and how many by a majority only; and if he will make arrangements for the rehearing of all rejected appeals which were not rejected unanimously or take action forthwith, without further hearing, to give the benefit of the doubt to all appellants in such cases.

The ATTORNEY-GENERAL: I am aware of the decision referred to. The decisions of pensions appeal tribunals as announced in court and communicated to the parties do not normally indicate whether the members were unanimous, nor does this fact usually appear in cases stated on appeal to the judge. It can in general only be ascertained by drawing an inference from the private notes of the individual members of the tribunals where such notes exist. I am unable therefore to state the number of cases corresponding to that tried by Mr. Justice Denning and it would be impossible to ascertain it without examining the notes of the members of the tribunals in nearly 40,000 cases. Although the procedure adopted by the tribunals has not been in every case in conformity with the principle laid down in the judgment referred to, there is no evidence that any injustice has been done, and my noble friend is not prepared to adopt either of the courses suggested by the hon. member.

Mr. DRIBERG: If what my right hon. and learned friend says is the case, and I see his difficulty, is there not manifestly a most unfair disparity between the appellants who were fortunate on 5th May and the great majority of the appellants whose appeals have been rejected?

The ATTORNEY-GENERAL: No, sir. I cannot accept that view. It occasionally happens that a higher tribunal reverses a view of the law which has hitherto been acted upon by the courts for a long period, but that does not result in the earlier cases, which were decided on what was then conceived to be the law, being reopened. It may happen, in the course of years to come, that a judge who hears pension appeals will arrive at the view that some practice hitherto followed and accepted was not correct. If that were to enable the parties who did not contest the practice as applied to their own cases at the time to reopen those cases, we should never reach finality in any of these matters.

Mr. SYDNEY SILVERMAN: Does not my right hon. and learned friend agree that there ought to be a very clear distinction drawn between what is the law as between litigants and what is the law affecting the claim by a disabled ex-service man against the State for his pension, and since this decision now makes it perfectly clear that a large number of people who ought to have had a pension were deprived of it how can the State with any conscience deprive them of it?

The ATTORNEY-GENERAL: I am quite unable to accept the assumption that the conclusion is to be drawn at all from the decision of the learned judge that there is any justification for saying that anyone who ought to have received a pension is being deprived of one. Parliament has decided that these claims are to be decided by a form of judicial procedure which has been laid down, involving a hearing before tribunals, with a possibility of appeal to the judge. The whole basis of judicial procedure in this country is that a particular decision which is not challenged within the time limit for an appeal, should stand as between the parties to it, whatever view may be taken subsequently, in another case, as to the law which was applied in the previous decision.

Mr. HECTOR HUGHES: In the particular and unusual circumstances arising out of Mr. Justice Denning's judgment, would it not be right, where the respective numbers contributing to any division of opinion among the members of a tribunal are not known, and there is therefore a reasonable doubt as to whether, in the light of the doctrine laid down by Mr. Justice Denning, any particular application should or should not succeed, that the appellant should be given the benefit of that doubt?

The ATTORNEY-GENERAL: Where a tribunal consisting of several members announces its decision without a dissentient voice, that decision has to be taken as the decision of the tribunal as a whole, a decision in which all the members acquiesce. We could only ascertain whether that was, in fact, the case by examining the private notes of the members of tribunals in something like 40,000 cases. That would be quite an impracticable course to pursue, even if it were a course which was desirable in the interests of justice. My noble friend and I do not think that it is a course which is desirable in the interests of justice. [22nd May.

SECURITIES (TRANSFER DEEDS)

Lieut.-Colonel DOWER asked the Chancellor of the Exchequer if stock and share brokers who are licensed dealers in securities, registered with the Board of Trade, may now stamp and sign declarations as required by Defence (Finance) Regulations, 1939, on the back of transfer deeds; or when they may be so authorised.

Mr. DALTON: This matter is at present under active consideration. [23rd May.

# RECENT LEGISLATION

STATUTORY RULES AND ORDERS, 1947

No. 915. **Control of Rates of Hire of Plant** (First Amendment) Order. May 13.

No. 913. **County Court Districts** (Holt and North Walsham) Order. April 30.

No. 925. **Motor Vehicles** (Driving Licences) Regulations. May 13.

[Any of the above may be obtained from the Publishing Department, S.L.S.S., Ltd., 88/90, Chancery Lane, London, W.C.2.]

# NOTES AND NEWS

### Honours and Appointments

The Lord Chancellor has appointed Mr. ALFRED TYLOR, K.C., of 3, Paper Buildings, Temple, E.C.4, to be Judge of Bow County Court in the place of Judge Gordon Alchin, A.F.C., deceased. The appointment is dated 22nd May, 1947.

The American Ambassador in London, Mr. LEWIS DOUGLAS, has been elected an Honorary Master of the Bench of the Middle Temple.

### Notes

The forty-fourth Annual General Meeting of the Liverpool Law Clerks' Society will be held in the Lecture Room, Lloyds Bank Building, 11/13, Victoria Street, Liverpool, on Tuesday, 3rd June, 1947, at 5.30 p.m.

At the Election Court of the Worshipful Company of Solicitors, held at Grocers' Hall on 19th May, following the Annual Guild Service at St. Stephen, Walbrook, Mr. A. P. Whatley (Messrs. Maples, Teesdale & Co.) was elected Master of the Company for 1947–48, Mr. H. N. Smart, C.M.G., O.B.E., J.P. (Messrs. Janson, Cobb, Pearson & Co.) was elected Senior Warden, and Mr. R. T. Outen (Messrs. Ashurst, Morris, Crisp & Co.) Junior Warden. They will be installed on 18th June, when the Annual Meeting of Liverymen and Freemen will be held at 4.30 p.m. at Tallow Chandlers' Hall, 4, Dowgate Hill, E.C.4.

### THE LAW SOCIETY

HONOURS EXAMINATION

At the examination for honours of candidates for admission on the Roll of Solicitors held in March the examination committee recommended the following as being entitled to honorary distinction:—

FIRST CLASS.—J. A. A. Cava, B.A. (Wales), articled to Mr. Joseph Lewis Walters, of Messrs. Phœnix and Walters, of Cardiff.

SECOND CLASS (in alphabetical order).—S. Buchman, R. H. E. Heath, R. M. Hodges, J. H. Measures.

THIRD CLASS (in alphabetical order).—P. J. Bairstow D. A. Blake, R. W. T. Cass, J. H. L. Chapman, G. S. F. Gill, N. H. Jackson, F. E. A. Kidwell, E. R. Pyke, K. M. Ratcliff, R. Scott, A. C. Staples, T. P. Dudley Ward, P. E. Webster, S. R. G. Whetham and R. S. Whitby.

The Council of The Law Society have accordingly given a class certificate and awarded the following prize: to Mr. Cava, the Clement's Inn Prize, value about £42. The Council have given class certificates to the candidates in the second and third classes. One hundred and five candidates gave notice for examination.

### Wills and Bequests

Mr. H. Bradshaw, solicitor, of Surbiton, left £40,400. After provision for various personal legacies and annuities the residue on the death of the annuitants is left to the Trustees of London Parochial Charities, of Temple Gardens, E.C. "for such charitable purposes as they in their discretion may think fit."

Mr. J. E. Crowther, solicitor, of Ilkley, left £14,885, with net personalty £13,303.

# STOCK EXCHANGE PRICES OF CERTAIN TRUSTEE SECURITIES

Bank Rate (26th October, 1939) 2%

| | Div. Months | Middle Price May 23 1947 | Flat Interest Yield £ s. d. | ‡ Approximate Yield with redemption £ s. d. |
|---|---|---|---|---|
| **British Government Securities** | | | | |
| Consols 4% 1957 or after | FA | 115 | 3 9 7 | 2 3 0 |
| Consols 2½% | JAJO | 96 | 2 12 1 | — |
| War Loan 3% 1955–59 | AO | 107 | 2 16 1 | 2 0 8 |
| War Loan 3½% 1952 or after | JD | 106¼ | 3 5 10 | 2 5 2 |
| Funding 4% Loan 1960–90 | MN | 119 | 3 7 3 | 2 5 10 |
| Funding 3% Loan 1959–69 | AO | 107 | 2 16 1 | 2 6 5 |
| Funding 2½% Loan 1952–57 | JD | 104½ | 2 12 8 | 1 15 9 |
| Funding 2½% Loan 1956–61 | AO | 103⅜ | 2 8 4 | 2 1 3 |
| Victory 4% Loan Av. life 18 years | MS | 120 | 3 6 8 | 2 11 11 |
| Conversion 3½% Loan 1961 or after | AO | 112⅛ | 3 2 3 | 2 8 9 |
| National Defence Loan 3% 1954–58 | JJ | 107 | 2 16 1 | 1 15 0 |
| National War Bonds 2½% 1952–54 | MS | 103⅜ | 2 8 4 | 1 15 11 |
| Savings Bonds 3% 1955–65 | FA | 106⅜ | 2 16 4 | 2 0 9 |
| Savings Bonds 3% 1960–70 | MS | 107 | 2 16 1 | 2 7 3 |
| Treasury 3%, 1966 or after | AO | 107 | 2 16 1 | 2 10 8 |
| Treasury 2½%, 1975 or after | AO | 97 | 2 11 7 | — |
| Guaranteed 3% Stock (Irish Land Acts) 1939 or after | JJ | 102 | 2 18 10 | — |
| Guaranteed 2½% Stock (Irish Land Act, 1903) | JJ | 102 | 2 13 11 | — |
| Redemption 3% 1986–96 | AO | 113 | 2 13 1 | 2 9 5 |
| Sudan 4½% 1939–73 Av. life 16 years | FA | 121 | 3 14 5 | 2 16 11 |
| Sudan 4% 1974 Red. in part after 1950 | MN | 115⅛ | 3 9 3 | — |
| Tanganyika 4% Guaranteed 1951–71 | FA | 106⅛ | 3 15 1 | 2 0 3 |
| Lon. Elec. T.F. Corp. 2½% 1950–55 | FA | 101⅛ | 2 9 3 | — |
| **Colonial Securities** | | | | |
| *Australia (Commonw'h) 4% 1955–70 | JJ | 111⅛ | 3 11 9 | 2 5 9 |
| Australia (Commonw'h) 3½% 1964–74 | JJ | 110 | 2 19 1 | 2 10 4 |
| *Australia (Commonw'h) 3% 1955–58 | AO | 104⅛ | 2 17 5 | 2 8 1 |
| †Nigeria 4% 1963 | AO | 119⅛ | 3 6 11 | 2 10 2 |
| *Queensland 3½% 1950–70 | JJ | 104 | 3 7 4 | — |
| Southern Rhodesia 3½% 1961–66 | JJ | 112⅛ | 3 2 3 | 2 8 10 |
| Trinidad 3% 1965–70 | AO | 108 | 2 15 7 | 2 8 5 |
| **Corporation Stocks** | | | | |
| *Birmingham 3% 1947 or after | JJ | 101 | 2 19 5 | — |
| *Leeds 3½% 1958–62 | JJ | 107 | 3 0 9 | 2 10 2 |
| *Liverpool 3% 1954–64 | MN | 105 | 2 17 2 | 2 4 3 |
| Liverpool 3½% Red'mable by agreement with holders or by purchase | JAJO | 120⅛ | 2 18 1 | — |
| London County 3% Con. Stock after 1920 at option of Corporation | MSJD | 101 | 2 19 5 | — |
| *London County 3½% 1954–59 | FA | 110 | 3 3 8 | 1 19 8 |
| *Manchester 3% 1941 or after | FA | 101 | 2 19 5 | — |
| *Manchester 3% 1938–63 | AO | 105 | 2 17 2 | 2 8 7 |
| Met. Water Board "A" 1963–2003 | AO | 103⅛ | 2 18 0 | 2 14 7 |
| * Do. do. 3% "B" 1934–2003 | MS | 102 | 2 18 10 | — |
| * Do. do. 3% "E" 1953–73 | JJ | 104 | 2 17 8 | 2 4 2 |
| Middlesex C.C. 3% 1961–66 | MS | 106 | 2 16 7 | 2 9 10 |
| *Newcastle 3% Consolidated 1957 | MS | 105 | 2 17 2 | 2 8 0 |
| Nottingham 3% Irredeemable | MN | 107 | 2 16 1 | — |
| Sheffield Corporation 3½% 1968 | JJ | 115 | 3 0 10 | 2 11 4 |
| **Railway Debenture and Preference Stocks** | | | | |
| Gt. Western Rly. 4% Debenture | JJ | 124 | 3 4 6 | — |
| Gt. Western Rly. 4½% Debenture | JJ | 125⅛ | 3 11 9 | — |
| Gt. Western Rly. 5% Debenture | JJ | 137⅛ | 3 12 9 | — |
| Gt. Western Rly. 5% Rent Charge | FA | 133⅛ | 3 14 11 | — |
| Gt. Western Rly. 5% Cons. G'rteed. | MA | 130⅛ | 3 16 8 | — |
| Gt. Western Rly. 5% Preference | MA | 119⅛ | 4 3 8 | — |

* Not available to Trustees over par.

† Not available to Trustees over 115.

‡ In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.

"THE SOLICITORS' JOURNAL"

*Editorial, Publishing and Advertisement Offices:* 88–90, Chancery Lane, London, W.C.2. Telephone: Holborn 1403.

*Annual Subscription:* Inland, £3; Overseas, £3 5s. (payable yearly, half-yearly or quarterly in advance).

*Advertisements* must be received first post Tuesday.

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